

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF OHIO  
3           EASTERN DIVISION  
4                   -   -   -  
5

6           IN RE:    NATIONAL                   :   HON. DAN A.  
7           PRESCRIPTION OPIATE           :   POLSTER  
8           LITIGATION                   :     
9   :     
10          APPLIES TO ALL CASES           :   NO.  
11   :   1:17-MD-2804  
12   :     
13   :   

14                   - HIGHLY CONFIDENTIAL -  
15

16          SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
17   -   -   -  
18

19                   May 29, 2019  
20   -   -   -  
21

22                   Videotaped deposition of  
23          JONATHAN R. MACEY, taken pursuant to  
24          notice, was held at the offices of  
Kirkland Ellis, LLP, 601 Lexington  
Avenue, New York, New York, beginning at  
9:10 a.m., on the above date, before  
Michelle L. Gray, a Registered  
Professional Reporter, Certified  
Shorthand Reporter, Certified Realtime  
Reporter, and Notary Public.

25   -   -   -  
26                   GOLKOW LITIGATION SERVICES  
27          877.370.3377 ph | 917.591.5672 fax  
28                   deps@golkow.com  
29

1 APPEARANCES:

2

ROBBINS GELLER RUDMAN & DOWD, LLP

3 BY: AELISH M. BAIG, ESQ.

Post-Montgomery Center

4 One Montgomery Street

Suite 1800

5 San Francisco, California 94104

(415) 288-4545

6 aelishb@rgrdlaw.com

7 - and -

8 ROBBINS GELLER RUDMAN & DOWD, LLP

BY: DORY P. ANTULLIS, ESQ.

9 120 East Palmetto Park Road

Boca Raton, Florida 33432

10 (561) 750-3000

Dantullis@rgrdlaw.com

11 Representing the Plaintiffs

12

KIRKLAND & ELLIS, LLP

13 BY: JENNIFER LEVY, ESQ.

1301 Pennsylvania Avenue, N.W.

14 Washington, D.C. 20004

(202) 879-5211

15 jennifer.levy@kirkland.com

Representing the Defendant, Allergan

16 Finance

17

DECHERT, LLP

18 BY: ALYSSA CLARK, ESQ.

1095 Avenue of the Americas

19 New York, New York 10036

(212) 698-3500

20 Alyssa.clark@dechert@dechert.com

Representing the Defendant, Purdue

21 Pharmaceuticals

22

23

24

1 TELEPHONIC/STREAMING APPEARANCES:

2

3 KIRKLAND & ELLIS, LLP

BY: ELIZABETH DALMUT, ESQ.

4 1301 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

5 (202) 879-5211

Elizabeth.dalmut@kirkland.com

6 Representing the Defendant, Allergan

Finance

7

8 O'MELVENY & MYERS, LLP

BY: JEN CARDELÚS, ESQ.

9 400 South Hope Street, 18th Floor

Los Angeles, California 90071

10 (213) 430-6665

Jcardelus@omm.com

11 Representing the Defendant, Janssen and

Johnson & Johnson

12

13 BAILEY WYANT PLLC

BY: JOHN P. FULLER, ESQ.

14 500 Virginia Street East

Suite 600

15 Charleston, West Virginia 25301

(304) 720-0704

16 jfuller@baileywyant.com

Representing the Defendant, West

17 Virginia Board of Pharmacy

18

19 ALSO PRESENT:

20

21 VIDEO TECHNICIAN:

22 Devyn Mulholland

23

24

- - -  
I N D E X  
- - -

Testimony of:

JONATHAN R. MACEY

By Ms. Baig 7

By Ms. Levy 264

- - -  
E X H I B I T S  
- - -

NO.	DESCRIPTION	PAGE
Macey-1	Notice of Deposition	8
Macey-2	Expert Report of Jonathan R. Macey 5/10/19	73
Macey-3	Curriculum Vitae Of Jonathan R. Macey	152

1 - - -

2 DEPOSITION SUPPORT INDEX

3 - - -

4

5 Direction to Witness Not to Answer

6 PAGE LINE

110 10

7

8 Request for Production of Documents

9 PAGE LINE

None.

10

11 Stipulations

12 PAGE LINE

None.

13

14 Questions Marked

15 PAGE LINE

None.

16

17

18

19

20

21

22

23

24

1 - - -

2 THE VIDEOGRAPHER: We are  
3 now on the record.

4 My name is Devyn Mulholland,  
5 I'm a videographer with Golkow  
6 Litigation Services.

7 Today's date is May 29,  
8 2019, and the time is 9:10 a.m.

9 This video deposition is  
10 being held in New York, New York,  
11 in the matter of National  
12 Prescription opiate litigation.

13 The deponent is Jonathan  
14 Macey.

15 Counsel will be noted on the  
16 stenographic record. The court  
17 reporter is Michelle Gray and will  
18 now swear in the witness.

19 - - -

20 ... JONATHAN R. MACEY,  
21 having been first duly sworn, was  
22 examined and testified as follows:

23 - - -

24 EXAMINATION

1

- - -

2 BY MS. BAIG:

3 Q. Good morning, Mr. Macey.

4 A. Good morning, counselor.

5 Q. We met briefly off the  
6 record, but could you state your full  
7 name and address for the record?

8 A. Certainly. My name is  
9 Jonathan R. Macey, and my address is 27  
10 Rimmon Road, Woodbridge, Connecticut  
11 06525.

12 Q. And have you had your  
13 deposition taken before?

14 A. Yes.

15 Q. Approximately how many  
16 times?

17 A. 50.

18 Q. Okay. So you understand  
19 very well the procedures of the  
20 deposition; is that right?

21 A. I believe I do.

22 Q. Okay. And have you seen  
23 your deposition notice in this case?

24 A. I have.

1 MS. BAIG: Let's have this  
2 marked as Exhibit 1.

3 (Document marked for  
4 identification as Exhibit  
5 Macey-1.)

6 BY MS. BAIG:

7 Q. And is this the deposition  
8 notice that you saw before?

9 A. Yes, it is.

10 Q. And if you turn to the third  
11 page, do you see Exhibit A?

12 A. I do.

13 Q. And did you bring any  
14 documents with you to the deposition  
15 today?

16 A. I did not.

17 Q. Okay. Do you see the  
18 document request here for three  
19 categories of documents?

20 A. Yes.

21 Q. And the first one being all  
22 documents or other materials you reviewed  
23 since the date of your report that you  
24 have not specifically identified in your



1 report in preparation for your expected  
2 testimony.

3 Do you see that?

4 A. Yes, I do.

5 Q. And do you have any such  
6 materials?

7 A. I do not.

8 Q. Understanding you don't have  
9 them here today, do you have them at all  
10 or no?

11 A. Respectfully, Counselor,  
12 there is no "them." If by "them" you  
13 refer to materials that I reviewed since  
14 the date of my report. Because I have  
15 not reviewed any additional materials  
16 since the date of my report.

17 Q. Okay. And the second  
18 category is an itemization of the hours  
19 spent and compensation paid or to be paid  
20 for your work in this matter and your  
21 staff's work in this matter, including  
22 all invoices you have submitted to  
23 counsel. Have you produced those  
24 documents already?

1 A. I don't know.

2 Q. Did you bring them here  
3 today?

4 A. No.

5 Q. And why not?

6 A. I -- I don't readily have  
7 them available.

8 I don't believe that I  
9 submit invoices to counsel in this case  
10 actually.

11 Q. You haven't submitted any  
12 invoices to counsel in this case?

13 A. I've submitted invoices,  
14 just to be -- so the record is clear, I  
15 don't believe I submit them to counsel.  
16 I submit them on some computer system.

17 Q. Who do you submit them to?

18 A. I think they go to the  
19 counsel's office at the client, but I'm  
20 not certain.

21 Q. And who do you under -- who  
22 is the client?

23 A. I believe that the clients  
24 are Allergan PLC, Allergan Finance,

1 Allergan Sales, and Allergan USA.

2 Q. Okay. Do you have a copy of  
3 the invoices that you have submitted to  
4 the client at your home or office?

5 A. They exist in the cloud.

6 Q. Okay.

7 A. I have access to them via my  
8 computer, which is both at home and at  
9 the office.

10 Q. Okay. And why did you not  
11 bring them here today pursuant to this  
12 deposition notice?

13 MS. LEVY: He wasn't asked  
14 to.

15 THE WITNESS: I was told not  
16 to bring them.

17 MS. BAIG: Okay. We would  
18 ask again that those documents be  
19 produced, Counsel.

20 MS. LEVY: Understood. We  
21 are negotiating with Special  
22 Master Cohen whether there will be  
23 such a requirement and whether it  
24 will be mutual. We've asked that

1           of plaintiffs' lawyers,  
2           plaintiffs' experts, and they have  
3           not gotten them produced.

4       BY MS. BAIG:

5           Q.     Okay. And the third  
6           category is a copy of the most current  
7           and accurate CV.

8                     Do you see that?

9           A.     I do.

10          Q.     And is the most current and  
11          accurate CV the one that is attached to  
12          your expert report?

13          A.     Yes, it is.

14          Q.     Okay. Do you have an idea  
15          of how much you have been paid to date  
16          for your services in this case?

17          A.     I'm sorry. Do I have an  
18          idea of how much I've been paid to date?

19          Q.     Mm-hmm.

20          A.     Yes, Counselor.

21          Q.     And what is that?

22          A.     I don't know the exact  
23          figure, but I think it's approximately  
24          \$27,000.

1 Q. Okay. And do you know  
2 approximately how much is outstanding?

3 A. I do not.

4 Q. Do you know whether it's --  
5 27,000 reflects more than half of your  
6 total work so far in this case?

7 A. I'm sorry. You're asking me  
8 what now?

9 Q. Whether the \$27,000 figure  
10 that you just stated, is that about half  
11 of your work so far? Do you know whether  
12 that's about half, or more or less than  
13 half is still unpaid?

14 A. Oh, so, right -- well, so  
15 that figure represents both the hours  
16 that I've spent, so it would be that  
17 figure, divided by the number of hours I  
18 spent. But it would have to be adjusted.  
19 There are also out-of-pocket expenses  
20 associated with travel. So there would  
21 be -- have to be an adjustment to that --  
22 to that figure.

23 Q. Do you know roughly how many  
24 hours you've spent working on this case?

1           A.       I don't know how many hours  
2       I spent working on this case.

3           Q.       What's your best estimate of  
4       about how many hours you've spent working  
5       on this case?

6           A.       Maybe -- I -- this is really  
7       just a guess. I would say maybe 80-ish.  
8       I don't know.

9           Q.       And your hourly rate is  
10      what?

11          A.       \$1,250 an hour.

12          Q.       And what are the travel  
13      expenses that you've incurred so far?

14          A.       So I've traveled to New York  
15      from my home, and I've incurred parking  
16      and train expenses.

17          Q.       On how many occasions?

18          A.       Maybe -- including today?  
19      Three or four.

20          Q.       And who actually retained  
21      you in this action?

22          A.       I'd have to review my  
23      retention letter. I don't recall  
24      specifically.

1 Q. Do you recall what firm  
2 retained you?

3 A. Oh you mean what law firm.  
4 Oh, sorry. Kirkland & Ellis.

5 Q. And who are you working with  
6 at Kirkland & Ellis?

7 A. Most recently, Jennifer  
8 Levy.

9 Q. Okay. Anybody else?

10 A. Ms. Donna Welch and some  
11 other attorneys who -- associate  
12 attorneys.

13 Q. From Kirkland & Ellis?

14 A. Correct.

15 Q. And have you met with any  
16 other law firms in connection with your  
17 work on this case?

18 A. I have not.

19 Q. Do you recall when you were  
20 first contacted about being an expert in  
21 this case?

22 A. Within the last six months.

23 Q. Do you know whether it was  
24 2018 or 2019?

1           A.       It would have been very late  
2       in 2018. I believe it was 2019.

3           Q.       And who first contacted you?

4           A.       I don't recall.

5           Q.       Is it your understanding  
6       that you're working not only on behalf of  
7       the Allergan entities that you  
8       identified, but also on behalf of Teva?

9           A.       That is not my  
10       understanding.

11          Q.       Have you spoken with anybody  
12       from Teva about this case?

13          A.       I have not.

14          Q.       Have you spoken with anyone  
15       from Morgan Lewis about this case?

16          A.       I have not.

17          Q.       Do you have an idea of what  
18       additional work you intend to do in this  
19       case?

20          A.       I do not. I would review  
21       any documents provided to me by counsel  
22       should -- I would expect, subject to,  
23       obviously the wishes of the client, that  
24       should there be expert reports filed by



1 plaintiffs, that I would read those  
2 reports and, if appropriate, respond.

3 Q. And do you intend to testify  
4 at trial in this case?

5 A. Do I personally intend to?  
6 If -- I am prepared to testify at trial.  
7 I don't know that I'm -- I don't know  
8 that I would assign a probability to that  
9 actually occurring, but I haven't really  
10 thought about it.

11 Q. Have you asked to testify at  
12 trial in this case, should there be a  
13 trial?

14 A. I don't recall.

15 Q. Are you collaborating with  
16 anybody on your work?

17 A. I'm not.

18 Q. So you don't have any staff  
19 or other people that you work with that  
20 are helping you prepare your reports and  
21 whatnot?

22 A. That is correct. All of the  
23 document review and document preparation  
24 and all other work is done exclusively by

1 me.

2 Q. Have you been retained by  
3 Kirkland & Ellis before?

4 A. Yes.

5 Q. On what occasions?

6 A. I don't recall. I think  
7 I've had other engagements with them  
8 though.

9 Q. How many approximately?

10 A. I don't recall specifically.  
11 At least two.

12 Q. You don't recall anything  
13 about those engagements?

14 A. I don't -- sitting here  
15 right now, I don't recall the parties. I  
16 have some vague recollection of some of  
17 the issues involved.

18 Q. Approximately when were  
19 those retentions?

20 A. They were some time ago.  
21 Years. I don't recall exactly when.

22 Q. More than ten years ago?

23 A. I don't believe so. I think  
24 there have been recent.

1 Q. Less than five years ago?

2 A. I believe so.

3 Q. And what were the issues  
4 that you do recall?

5 A. I don't recall with any  
6 specificity, but I seem to recall there  
7 was some issues regarding corporate  
8 governance, corporate structuring,  
9 ordinary and customary business practices  
10 of corporations and their subsidiaries,  
11 that sort of thing.

12 Q. And you don't recall who  
13 your -- who the clients were?

14 A. Correct.

15 Q. Did you submit expert  
16 report -- an expert report to the court  
17 in both of those -- in connection with  
18 both of those cases?

19 A. Yeah, just so the record is  
20 clear, when I said both, I mean, I don't  
21 recall precisely how many cases I've  
22 worked on with Kirkland & Ellis, but I  
23 have prepared expert reports.

24 Sitting here right now, I

1 don't recall whether those -- when the  
2 cases settled or where -- if the reports  
3 were ever filed in court. I don't -- I  
4 just don't know. I don't specifically  
5 recall ever testifying at trial in a  
6 matter on which I was retained by  
7 Kirkland & Ellis at a -- as an expert.

8 Q. Do you recall testifying in  
9 deposition on other matters in which you  
10 were retained by Kirkland & Ellis?

11 A. I believe so. I -- I think  
12 so. I don't have a specific  
13 recollection, but I believe I've  
14 testified at deposition in cases in which  
15 I've been retained by Kirkland & Ellis as  
16 an expert.

17 Q. Do you believe it's on more  
18 than two occasions?

19 A. I don't believe so, no.

20 Q. And you have no idea who the  
21 clients were in either -- in either case?

22 A. Well, I don't remember the  
23 names of the clients. I wouldn't say I  
24 have no idea. I recall one was in -- a

1 real estate developer, I just don't  
2 remember the name of them -- they  
3 developed a lot of, what do you call  
4 those -- you know, malls, it was one. I  
5 think there was a private equity firm  
6 or -- yeah, a private equity firm may  
7 have been a client. I -- I just -- I'm  
8 not positive.

9 Q. And do you recall anything  
10 about your opinion in the case that had  
11 to do with a real estate developer?

12 A. I do -- I have some vague  
13 recollection with respect to the real  
14 estate developer that it involved  
15 fiduciary duties that were owed to a  
16 minority investor in a partnership or  
17 LLC. I can't remember the organizational  
18 form right now in -- with respect to  
19 issues such as use or patient corporate  
20 opportunity. And -- and participation  
21 rights in development ventures that  
22 arguably could or could not have been  
23 attributable to the legal entity that the  
24 minority investors were invested in.

1           Q.     To your recollection, was  
2     there any overlap with the issues in that  
3     case and the issues in this case?

4           A.     Well, they both involved a  
5     corporate governance analysis at a very  
6     high level of abstraction. So if one  
7     were taking a survey course in say a  
8     corporate governance class, the issues in  
9     that case and the issues in this case  
10    would be covered in both courses so  
11    there's some commonality, but there  
12    really wouldn't be a direct overlap.

13          Q.     And with respect to the  
14    second case that you recall being  
15    retained by Kirkland & Ellis in with  
16    respect to the private equity firm, do  
17    you have an understanding of -- or do you  
18    have a memory of what your opinions were  
19    in that case?

20          A.     I do not. That one was a  
21    longer time ago. And I don't remember  
22    any details about it.

23          Q.     Do you -- do you recall  
24    generally what that case was about?

1           A.       I could -- I could guess.  
2       But I don't specific -- I don't really  
3       know. I don't really remember.

4           Q.       And that case was between  
5       five and 10 years ago?

6           A.       I believe so.

7           Q.       Okay. So you don't recall  
8       anything about that case; is that right?

9           A.       Well, it involved a private  
10      equity firm. I could -- I mean, a lot of  
11      these cases involving private equity  
12      firms involve similar fact patterns. I  
13      don't -- I can tell you what the fact  
14      patterns were, but I don't remember if  
15      this case involved that fact pattern or  
16      was a little bit different. So I  
17      don't -- I would just be guessing.

18          Q.       Have you done any work for  
19      the Allergan entities before?

20          A.       I have not, no.

21          Q.       How about for Actavis or  
22      Watson?

23          A.       No, I have not.

24          Q.       Have you been engaged by any

1 of the other defendants in this case  
2 before?

3 A. Not that I'm aware of, no.

4 Q. Have you been engaged by any  
5 pharmaceutical companies before?

6 A. Yes.

7 Q. Which ones?

8 A. Boehringer Ingelheim.

9 Q. Any others?

10 A. Pharmaceutical companies? I  
11 may have been -- yes, I think so, maybe  
12 Schering-Plough. Are they a  
13 pharmaceutical company? I don't  
14 specifically recall who the client was.

15 I had a -- a -- I was an  
16 expert witness in -- in an arbitration  
17 involving a pharmaceutical company  
18 acquisition with two or three very large  
19 pharmaceutical companies, one of which  
20 was Schering-Plough.

21 Q. Do you remember what the  
22 other -- the other two or three were?

23 A. Oh dear. I think Merck was  
24 another one of these insurance



1 companies -- or sorry, sorry. I beg your  
2 pardon, counselor, pharmaceutical  
3 companies is what I meant to say. Merck,  
4 Schering-Plough, and there was a third.  
5 But I don't remember the name of it.

6 Q. Have you been retained by  
7 any pharmaceutical distributors before?

8 A. No.

9 Q. So you've never been  
10 retained by McKesson or Cardinal Health  
11 or AmerisourceBergen?

12 A. What was the third one?

13 Q. AmerisourceBergen.

14 A. No, I have not.

15 Q. Have you been retained by  
16 pharmacies before?

17 A. Yes.

18 Q. Which ones?

19 A. Walgreens.

20 Q. And what was the nature of  
21 that retention?

22 A. Walgreens had been acquired  
23 by a company called Alliance Boots.

24 And Walgreens had a contract

1 with -- I believe it was CVS. But in any  
2 event, Walgreens had a contract with a  
3 third company. And the contract with the  
4 third company was a very large contract.  
5 And the contractual provisions between  
6 the two parties, Walgreens and whatever  
7 this other party was, provided that  
8 should Walgreens be acquired or should  
9 there be a change of control of some  
10 particularly defined sort, then the  
11 contract would terminate and be  
12 renegotiated. And there was an  
13 arbitration brought by the contracting  
14 party -- it might have been CVS, I really  
15 don't remember who it was -- that claimed  
16 that the Walgreens-Alliance Boots  
17 transaction triggered the termination of  
18 the contract and required that the  
19 contract be renegotiated with new prices.

20 And Walgreens retained me,  
21 or Walgreens counsel retained me to  
22 testify about the -- the  
23 Walgreens-Alliance Boots  
24 acquisition/merger transaction. And the

1 question being whether the contractual  
2 provisions in this -- I think -- in this  
3 contract were triggered by this business  
4 combination between Walgreens and  
5 Alliance Boots.

6 Q. And what was your opinion in  
7 that matter?

8 A. I don't remember precisely.

9 Q. Do you remember generally?

10 A. Generally speaking, I  
11 characterized the transaction as  
12 accurately as I could and explained the  
13 sort of economics of the transaction.  
14 And I explained or went into this  
15 agreement and described the sort of  
16 business justifications for the  
17 agreement. I don't recall -- I don't --  
18 beyond that I don't recall the details.

19 Q. Do you recall whether you  
20 opined that the contractual provisions  
21 were or were not triggered by the  
22 business combination?

23 A. I believe I said that they  
24 were not triggered, but I would say about

1 an 80 percent degree of certainty with  
2 respect to that answer.

3 Q. And when was your retention  
4 in that case?

5 A. Couple of -- two or three  
6 years ago. Maybe more. Three or  
7 four years ago. I'm not really sure.

8 Q. And where was that case  
9 pending?

10 A. It was an arbitration  
11 somewhere in the state of Arizona. I  
12 believe Phoenix, but it might have been  
13 Tucson.

14 Q. And you submitted an expert  
15 report?

16 A. Yes.

17 Q. Did you testify at the  
18 arbitration?

19 A. Yes.

20 Q. And who was presiding over  
21 the arbitration?

22 A. It was -- it was a retired  
23 circuit court judge, a single judge, but  
24 I don't recall his name.

1 Q. Where in Arizona was it?

2 A. I don't recall. It was -- I  
3 think it was either Phoenix or Tucson. I  
4 don't -- I don't really remember. It was  
5 in an office building there. And I  
6 recall -- I believe that I stayed in a  
7 hotel in one of those two cities and went  
8 and testified at the arbitration in the  
9 other. But I don't recall which I  
10 stayed -- place I stayed and which place  
11 I testified in.

12 Q. Have you been retained by  
13 any -- oh. Actually, what counsel  
14 retained you in that case?

15 A. It was a law firm by the  
16 name of Bartlit Beck. I don't -- they  
17 have a longer name, they are in Chicago,  
18 but I don't remember the rest of the  
19 name.

20 Q. And who did you work with at  
21 Bartlit Beck?

22 A. Oh dear. A very nice  
23 person. I'm extremely fond of him and  
24 I'm blanking on his name. I don't recall

1 the name of the -- of the lawyers that I  
2 worked with at Bartlit Beck, I apologize.

3 Q. Have you been retained by  
4 any other pharmacies?

5 A. I don't think -- not that I  
6 recall sitting here right now.

7 Q. Have you ever been retained  
8 by Morgan Lewis?

9 A. Maybe. I just don't  
10 specifically recall. It's a well-known  
11 firm. I may have been retained by them.  
12 But if I was, I don't remember it right  
13 now. It's within the realm of  
14 possibility, though.

15 Q. How about Dechert?

16 A. I -- well, same answer.  
17 It's possible. I'm familiar with the  
18 firm. I may have -- it seems like I may  
19 have. I just don't remember.

20 Q. How about Arnold and Porter?

21 A. I don't believe I've ever  
22 been retained by Arnold and Porter.

23 Q. How about Ropes & Gray?

24 A. I may have done work with

1 Ropes & Gray. I don't specifically  
2 recall. I don't believe so.

3 Q. How about Jones Day?

4 A. I have been retained as an  
5 expert by Jones Day.

6 Q. And when was that?

7 A. Several years ago, maybe  
8 seven, five. I don't remember.

9 Q. And who was the client?

10 A. I don't remember who the  
11 client was.

12 Q. Do you recall whether you  
13 submitted an expert report?

14 A. I believe I did.

15 Q. Do you recall where the case  
16 was pending?

17 A. It was somewhere in the City  
18 of Chicago, in a district court, I --  
19 U.S. District Court in Chicago.

20 Q. Do you recall the nature of  
21 the opinion?

22 A. I beg your pardon. I didn't  
23 hear you. I'm sorry.

24 Q. Do you recall the nature of

1       your opinion?

2                   A.       Yes.

3                   Q.       What was that?

4                   A.       So my recollection is that  
5       this case involved the hostile takeover  
6       by an Australian mineral company, very  
7       large company, for a very large Canadian  
8       mineral company. And Jones Day  
9       represented the target company in the  
10      hostile acquisition, which was a  
11      Canadian -- sorry, yeah which was the  
12      Canadian company. And the question was  
13      to provide -- the issue that I addressed  
14      was to provide an economic and policy  
15      analysis of the nature of the structure  
16      and nature of the bidder's offer for the  
17      target and to explain what -- the  
18      economic nature of the offer with  
19      particular focus on an opinion as to  
20      whether the offer would be considered  
21      coercive to the target company  
22      shareholders from a game theory  
23      perspective.

24                  Q.       What was the dispute there?



1           A.       Well, the dispute was that  
2       this big Australian company wanted to  
3       take over the not quite as big, but quite  
4       big, Canadian company, and the Canadian  
5       company did not want to get taken over  
6       and was resisting the offer.

7           Q.       And your opinion was what?

8           A.       My opinion was essentially  
9       to describe the structure of the offer  
10      and to explain a little bit of game  
11      theory, particularly what's known as the  
12      prisoner's dilemma and to describe ways  
13      in which the offer by the bidder could be  
14      construed as coercive to the target  
15      company's shareholders.

16          Q.       Have you been retained in  
17      connection with any other opioid-related  
18      litigation?

19          A.       I have not.

20          Q.       So this is your sole  
21      retention ever on behalf of any Allergan  
22      entity, correct?

23          A.       That's my -- that's my  
24      recollection. I believe that to be the

1 case. I don't believe I've ever been  
2 retained by any Allergan affiliate,  
3 subsidiary, et cetera, ever, no.

4 Q. And this is your sole  
5 retention in opioid litigation?

6 A. That is correct.

7 Q. When was your first  
8 experience testifying as an expert  
9 witness?

10 A. I'm tempted to say before  
11 you were born, but a long time ago. Let  
12 me try to give it a date.

13 Maybe -- I would say  
14 approximately 1998, 1999. That's -- I'm  
15 just trying to extrapolate back. I may  
16 be off. But it was somewhere in the late  
17 '80s or the 1990s. I honestly don't  
18 remember.

19 Q. And that was your first  
20 experience being retained as an expert  
21 witness; is that right?

22 A. This is my -- to the best of  
23 my recollection, yes.

24 Q. And how did you become --

1     how did you come to be an expert? And by  
2     that, I don't mean your educational  
3     background.

4             A.     I understand.

5             Q.     We'll get to that. I mean  
6     more your work as a testifying expert.

7             A.     So if I'm -- correct me,  
8     obviously, if I'm not providing -- giving  
9     you the information that you need. But,  
10    so I was a law professor at the time at  
11    Cornell Law School in Ithaca, New York.  
12    And I was contacted by a lawyer at a law  
13    firm called McLane something in New  
14    Hampshire, was looking for a corporate  
15    governance expert, corporate -- an expert  
16    on piercing the corporate veil, and  
17    reached out to me.

18            Q.     Do you recall the name of  
19    that lawyer?

20            A.     It was something Life.  
21    Bruce Felmly. That was his name. I  
22    don't recall the spelling, but I think it  
23    was F-E-M-L-E-Y, or F-E-L-M-E-Y. Felmly,  
24    something of that nature. It was a law

1       firm -- the McLane law firm in -- I  
2       believe in Manchester, New Hampshire.

3               Q.       Going back for a moment to  
4       the cases that you've just described for  
5       me. Were any of those related to  
6       piercing the corporate veil?

7               A.       When you say any of those,  
8       do you mean -- what do you mean? Any of  
9       the ones that I've talked about today?

10              Q.       Mm-hmm.

11              A.       Well, the one that I just  
12       talked about was a piercing the corporate  
13       veil case. So that one certainly was.  
14       The others involved corporate governance  
15       and corporate control. I don't recall if  
16       they had piercing elements in them.

17              Q.       Do you recall any cases that  
18       you've testified in that had piercing the  
19       corporate veil elements in them?

20              A.       Well, it would be -- I mean,  
21       I -- I've testified in several cases that  
22       have piercing the corporate veil elements  
23       in them, yes. I do recall testifying in  
24       piercing the corporate veil cases in

1 the -- in the past.

2 Q. Which cases do you recall  
3 testifying on that issue?

4 A. So the -- this is not --  
5 this is not a complete list. But the  
6 first retention that I mentioned to you a  
7 moment ago from a long time ago, was a  
8 piercing the corporate veil case.

9 The Boehringer Ingelheim  
10 pharmaceutical case that I mentioned to  
11 you not long ago was a piercing the  
12 corporate veil case.

13 Incidentally, I --  
14 this is -- this discussion of Boehringer  
15 Ingelheim has jogged my memory. You were  
16 asking me a while ago about cases in  
17 which I've been retained by Kirkland &  
18 Ellis. And I'm pretty sure that Kirkland  
19 & Ellis was the law firm that retained me  
20 in the Boehringer Ingelheim litigation.  
21 In terms of going back to your more  
22 recent question, I'm not quite sure what  
23 you're asking.

24 Those -- of the cases that

1 we've discussed so far this morning and  
2 which I've served as an expert witness,  
3 those are the ones that I immediately  
4 remember as involving piercing the  
5 corporate veil issues.

6 I've testified in other  
7 cases in this -- as an expert in piercing  
8 the corporate veil, in cases involving --  
9 in which the issue of piercing the  
10 corporate veil has been raised.

11 Q. What cases do you recall  
12 testifying about piercing the corporate  
13 veil?

14 A. So I don't -- I can't recall  
15 names of these cases specifically. I  
16 just recall that I've testified in cases.  
17 In addition to the two that I mentioned  
18 involving piercing the corporate veil,  
19 there have been a handful of others.

20 Q. What do you recall about the  
21 handful of others?

22 A. Some of them involved public  
23 utilities. Some of them involved  
24 construction companies. That's what I --

1       that's what I recall right at the moment.

2               Q.       Do you recall ever opining  
3       that the corporate veil was pierced?

4               A.       I'm not -- I don't really  
5       understand the question.   That the  
6       corporate veil was pierced?

7               Q.       Yes.

8               A.       I don't -- I don't --

9               Q.       Or ought to be pierced?

10              A.       Oh, I see.   Sorry, sorry.

11                      I don't -- so I would  
12       view -- I don't -- so, let me see how to  
13       put this.

14                      Generally speaking, my  
15       testimony would not involve -- I don't  
16       think I would generally testify that the  
17       corporate veil should be pierced.   I  
18       think my testimony would take the form of  
19       it would be consistent or inconsistent  
20       with ordinary and customary corporate  
21       behavior to peers the corporate veil.

22                      Or it would be -- it would  
23       further or detract from principles of  
24       economic efficiency or valid public

1 policy to pierce the corporate veil under  
2 a particular fact pattern or not to  
3 pierce the corporate veil.

4 I don't believe I would  
5 ever -- I don't -- so my testimony would  
6 sort of take that form. I realize this  
7 may not be responsive. I'm happy to  
8 answer, obviously, follow-up questions,  
9 but -- so in other words, I don't think I  
10 would -- I -- I don't think -- I'm not  
11 sure. I'd have to look, but I don't know  
12 that I've ever testified either way,  
13 that, oh, the corporate veil should be  
14 pierced or the corporate veil should not  
15 be pierced.

16 But I've, you know,  
17 testified with respect to economic or  
18 public policy issues surrounding, you  
19 know, the reasons for the veil-piercing  
20 doctrine and the reasons for the notion  
21 of, you know, corporate separateness and  
22 limited liability and things like that.

23 I hope -- I hope that's  
24 somewhat responsive.



1           Q.     Have you ever provided any  
2     opinion that you recall that would  
3     support piercing the corporate veil?

4           A.     Yes.

5           Q.     Which do you recall?

6           A.     So I have testified in  
7     several cases that piercing the corporate  
8     veil would be consistent with public  
9     policy that would be, you know, to be  
10    blunt about it, I guess, cases in which  
11    the law firm that retained me was  
12    seeking, in the litigation in which I was  
13    retained, to have the corporate veil  
14    pierced, and in which I gather the law  
15    firm thought that the expert report that  
16    I prepared and the testimony that I  
17    provided was useful to them as advocates  
18    because they retained me in the case, and  
19    filed my expert report and had me testify  
20    in the cases.

21                   So, I mean, just to be blunt  
22    or mercenary about it, I suppose, I've  
23    been what one might colloquially describe  
24    as having been on the plaintiff's side in

1     piercing cases before.

2                 Q.     Which cases?

3                 A.     So the one I mentioned to  
4     you before in Manchester and then several  
5     other cases, all of them are -- you know,  
6     involved kind of the same basic  
7     constellation of -- of facts. They  
8     involve -- these are cases involving  
9     public utilities. So the case Florida  
10    Power & Light that I recall. A case  
11    called Ageco. A case called New York Gas  
12    & Electric. Manchester Gas I think.  
13    There's a -- those are the parties' names  
14    that I -- that I recall.

15                Q.     The Manchester case, was  
16    that pending in Manchester?

17                A.     I believe at the time, it's  
18    no longer pending obviously, but when I  
19    was retained, yes, it was pending in --  
20    somewhere in New Hampshire. I would say  
21    Manchester. It could have been in a  
22    different city. The law firm that  
23    retained me was in Manchester. They had  
24    an office in another New Hampshire city.

1 And I -- I testified in trial in that  
2 case, and I don't recall -- I believe it  
3 was in Manchester. I'm pretty sure, but  
4 I'm not 100 percent sure.

5 Q. Do you recall who the judge  
6 was in that case?

7 A. I do not.

8 Q. Do you recall who the  
9 parties were in that case?

10 A. They were -- one was I think  
11 Manchester Gas & Electric. And the other  
12 party was, I think it was UGI, but I'm  
13 not 100 percent positive.

14 Q. Do you recall whether it was  
15 in state or federal court?

16 A. I believe it was in federal  
17 court.

18 Q. Do you have a copy of your  
19 report in that case?

20 A. No.

21 Q. You don't keep copies of  
22 your reports?

23 A. Well, I -- I have copies of  
24 some of my reports. That report was a

1 long time ago. I was -- I was at a  
2 different law school, I had a different  
3 computer. So I don't have that with me.  
4 I don't have it anymore.

5 Q. You don't have it with you  
6 or you don't have it at all?

7 A. I could search for it. I  
8 don't believe I have it at all. There's  
9 a chance I have it, but I don't believe  
10 so. I'd -- I'd have to -- I'd have to  
11 search.

12 Q. Was it filed publicly?

13 A. Well, I was an expert  
14 witness and I testified at trial. I  
15 don't believe it was under seal or  
16 anything. I just -- I believe it's --  
17 what -- it's as much a part of the court  
18 record as anything else in that  
19 proceeding.

20 Q. And the second case you  
21 mentioned, I think Florida Power & Light;  
22 is that right?

23 A. Yes.

24 Q. And that's a case where your

1 opinion would have supported piercing the  
2 corporate veil; is that right?

3 A. It would have been  
4 consistent -- it would have -- it would  
5 have been consistent with that idea, that  
6 notion that piercing the corporate veil  
7 would have -- would not have violated  
8 public policy.

9 Q. And where was that case  
10 pending?

11 A. So it was a Florida -- I  
12 want to say Ohio. But I'm not positive.

13 Q. Do you know whether it was  
14 state or federal court?

15 A. I believe it was federal  
16 court.

17 Q. Do you recall the judge?

18 A. I believe it was Judge  
19 Polster.

20 Q. Do you recall the year?

21 A. I do not.

22 Q. Do you recall the judge in  
23 the Manchester case?

24 A. I do not.

1 Q. Do you recall roughly the  
2 year of the case before Judge Polster?

3 A. I don't recall roughly the  
4 year. I would say -- if I had to guess,  
5 I would say maybe eight years ago. But  
6 it -- literally a guess. I don't recall  
7 the exact date.

8 Q. And did you testify at trial  
9 in that case?

10 A. I don't believe I did.

11 Q. So you testified only at  
12 deposition?

13 A. I think that's right. I  
14 mean, I filed a report in that case.  
15 I -- I don't specifically recall being  
16 deposed in the case, although I -- I have  
17 no reason to think that I wasn't. I just  
18 don't recall.

19 Q. And what was the controversy  
20 in that case?

21 A. It was what -- I'll be happy  
22 to give you a longer version if you  
23 prefer, but in -- in a short version it  
24 was a reverse piercing case.

1 Q. What do you mean by that?

2 A. It's a case in which -- so  
3 generally speaking in piercing the  
4 corporate veil cases, creditors are  
5 attempting to pierce the corporate veil  
6 against a subsidiary and to hold  
7 liability to a parent or shareholder.

8 In this particular case,  
9 the -- a subsidiary company was the  
10 plaintiff and was seeking to have its own  
11 corporate veil pierced such -- so as to  
12 find liability from the parent. That's  
13 what I mean by a reverse piercing case.  
14 It's where a subsidiary attempts to  
15 pierce the corporate veil so that the  
16 assets of a parent or controlling  
17 shareholder will be available to satisfy  
18 claims against the subsidiary.

19 Q. And you were retained by  
20 what party?

21 A. Plaintiff.

22 Q. And what was the basis of  
23 your opinion, that you recall?

24 A. The basis of my opinion had

1 to do with ordinary and customary  
2 corporate behavior in public utility  
3 holding companies, in particular in  
4 holding companies in general in the  
5 period prior to the passage of the Public  
6 Utility Holding Company Act, and -- and  
7 essentially in the kind of late 1800s,  
8 early 1900s period of American history  
9 and what was ordinary and customary  
10 behavior among corporate affiliates in  
11 that historical point in time.

12 Q. And was your opinion in that  
13 case that the corporate veil should be  
14 pierced?

15 A. Well, I don't -- I think  
16 I've answered that. I'll give you the  
17 same answer I gave you before, which is I  
18 believe that my testimony was that -- was  
19 consistent or at least not inconsistent  
20 with the plaintiff's veil piercing  
21 theory. I don't believe I actually  
22 asserted that -- that the veil should  
23 have been pierced.

24 My -- my hesitation,



1     frankly, is, sitting here right now, it's  
2     my view that that opinion would usurp the  
3     judge's prerogative to make an ultimate  
4     determination of the legal outcome of the  
5     case. And I would -- I believe, although  
6     I could be mistaken, that I would have  
7     refrained from doing that.

8                     I think my testimony was  
9     that the corporate governance of this  
10    particular subsidiary was aberrant, did  
11    not -- was not -- did not conform with  
12    ordinary and customary corporate  
13    governance behavior. And that there were  
14    particular facts in the case that -- that  
15    suggested that the -- the general policy  
16    in which courts respect the corporate  
17    form and decline to pierce the corporate  
18    veil could be -- could be ignored without  
19    doing serious violence to the capital  
20    formation process in the United States.

21                    Q.     Do you recall what any of  
22    those factors were or what the evidence  
23    was in that case that supported your  
24    opinion?

1           A.       I -- yeah, so, essentially  
2       the factors that supported my opinion in  
3       that case as I recall, was a company --  
4       the parent company in that case, which I  
5       believe was Ageco, was essentially a  
6       criminal enterprise that had been run for  
7       the purpose of defrauding investors and  
8       provided the impetus for the passage of  
9       the Public Utility Holding Company Act,  
10      and that there was what I described as  
11      aberrant behavior in the running of the  
12      firm, where the corporate governance of  
13      the firm, of the subsidiary that had --  
14      subsidiaries that had retained me, had  
15      been outsourced from a couple of  
16      companies in Florida to New York. And  
17      that assets were improperly commingled  
18      and -- and that the subsidiaries were  
19      incapable of operating themselves  
20      without -- without the -- without the day  
21      to -- the guidance over the day-to-day  
22      environmental operation -- oversight of  
23      the parent.

24                                      And that the oversight of

1 the parent was abusive in that it  
2 stripped -- systematically stripped  
3 assets in a variety of ways from the  
4 subsidiary and for the benefit of the --  
5 of the parent.

6 Q. Did the case go to trial?

7 A. I believe -- I believe --  
8 yes. So I believe so.

9 Q. Do you recall the outcome of  
10 that trial?

11 A. I believe that the judge in  
12 that case declined to pierce the  
13 corporate veil and respected the  
14 corporate integrity of the particular  
15 entities involved in the case.

16 Q. Do you recall the basis for  
17 that opinion?

18 A. I -- I am -- I --

19 Q. I mean the judge's opinion.

20 A. Oh, thank you. Certainly.  
21 I believe that the opinion  
22 was predicated on the -- a strong  
23 adherence by the judge to the principle  
24 of corporate separateness to the idea

1     that the corporate veil should be pierced  
2     only in extraordinary circumstances. And  
3     I believe the judge determined that there  
4     had been -- that the operation of these  
5     corporations in the way that I described  
6     them in my expert report did not violate  
7     public policy to an extent that merited  
8     piercing the corporate veil. That's my  
9     recollection sitting here right now of  
10    the basis for the judge's opinion.

11           Q.     And do you recall who  
12    retained you in that case?

13           A.     I believe I was retained by  
14    the law firm, now defunct, of Dickstein &  
15    Shapiro. But I'm not positive. I  
16    believe that's the case.

17           Q.     Do you remember the name of  
18    the lawyer that you worked with on that  
19    case?

20           A.     Almost. Let me -- give me a  
21    second. I think I can conjure this guy's  
22    name up.

23                   I do -- his name is not  
24    coming to me. I believe that I will

1     remember it. And if I do, if you want me  
2     to, I'll -- it's very close, but I can't  
3     just bring it up right now. I'm sorry.

4             Q.     Okay. Did you already give  
5     me a rough time frame for that case  
6     before Judge Polster?

7             A.     No. I tried. I think I  
8     told you about eight -- I want to say  
9     eight years ago. But I would not assign  
10    a high level of confidence to that -- to  
11    that estimate. But that's to the best of  
12    my recollection.

13            Q.     What is the next case that  
14    you recall providing an opinion which  
15    could be considered supportive of  
16    piercing the corporate veil?

17            A.     When you say the next, just  
18    the next one that comes to mind or next  
19    one chronologically? Or just -- how  
20    would you like me to answer?

21            Q.     Well, you've mentioned the  
22    Manchester case.

23            A.     Right.

24            Q.     You've mentioned Florida --

1 Florida Power.

2 A. Right.

3 Q. Is that the same as the Age  
4 company, or the Age company is separate?

5 A. So I believe that in the  
6 Florida Power case, the defendant --  
7 Florida Power was the plaintiff and Ageco  
8 was the defendant, is my -- I believe,  
9 yeah.

10 Q. Okay. And you mentioned New  
11 York Gas and Electric?

12 A. Correct.

13 Q. Are there any others?

14 A. Manchester, New York Gas and  
15 Electric.

16 There was a case that I  
17 testified in Federal District Court in  
18 New Haven -- I remember that, because it  
19 was in my hometown -- in one of -- on --  
20 in a piercing a corporate veil case  
21 involving public utilities and the public  
22 utility holding companies.

23 And I'm trying to remember.

24 It was a Connecticut utility and the

1 defendant was either UGI or Ageco, as I  
2 recall. So that -- that was another  
3 case. I don't -- I can't recall  
4 sitting -- I believe that was prior to  
5 the Florida case, but that might have  
6 been after. I don't --

7 Q. Who retained you in the New  
8 York Gas and Electric case?

9 A. I believe that was also  
10 Dickstein & Shapiro.

11 Q. And you were retained about  
12 behalf of the plaintiff or the defendant?

13 A. Plaintiff. All these cases  
14 were -- I mean, the -- were -- are  
15 plaintiff cases; that is, all these  
16 utility cases that we've been talking  
17 about the past few minutes.

18 Q. And what was the approximate  
19 time frame of the New York Gas and  
20 Electric case?

21 A. That was some time ago. I  
22 believe that was prior to Florida and  
23 Connecticut. Maybe -- that was maybe 10  
24 or 15 years ago.

1 Q. By Florida, you mean the  
2 Florida Power?

3 A. Florida Power case.

4 Q. And by Connecticut you mean  
5 Manchester?

6 A. No, no. Sorry. Manchester  
7 is New Hampshire. Connecticut, I don't  
8 remember the name of the plaintiff. It  
9 was maybe Connecticut Power and Light. I  
10 don't -- I mean, I don't remember --

11 Q. That's the public utility?

12 A. It was just -- I call it the  
13 Connecticut case, but it's distinct from  
14 the New Hampshire case. Those are two  
15 different cases.

16 Q. By Connecticut, you mean the  
17 public utilities holding case; is that  
18 right?

19 A. They're all public utility  
20 holding company cases, actually. Yeah.

21 Q. Okay. Who was the judge in  
22 the New York Gas and Electric case?

23 A. I don't recall. It was a  
24 judge in Rochester New York, as I recall.



1 But I don't remember the judge's name.

2 Q. Federal court or state?

3 A. Federal.

4 Q. Did you testify at trial?

5 A. Yes.

6 Q. And in deposition?

7 A. Correct.

8 Q. Approximate time frame?

9 A. I think that was 10 to  
10 15 years ago.

11 Q. Do you recall any facts of  
12 that case that you used to come to an  
13 opinion that was consistent with piercing  
14 the corporate veil?

15 A. I believe it was the same  
16 defendant. I believe my testimony was  
17 that the same defendants operated and  
18 controlled these various subsidiaries and  
19 that their sort of corporate governance  
20 modus operandi, their -- their corporate  
21 strategy and tactics and their corporate  
22 governance relationships with these  
23 various plaintiff subsidiaries was the  
24 same so that the control was what I

1 characterized, as I recall, as aberrant  
2 and abusive and involved diverting --  
3 improperly diverting assets of the  
4 subsidiary company to the parent through  
5 a variety of what I regarded to be  
6 abusive, self-dealing contracts,  
7 particularly managerial agreements  
8 between the subsidiaries and companies  
9 under the control of the parent.

10 Q. What do you mean by  
11 managerial agreements?

12 A. What do I mean by?

13 Q. Managerial agreements?

14 A. When I say managerial  
15 agreements, what I mean is a contract  
16 between a subsidiary and a parent that is  
17 called a managerial agreement. And that  
18 essentially outsources from the  
19 subsidiary to the parent the various  
20 components of the actual management of  
21 the subsidiary, the literal operations of  
22 the subsidiary on a day-to-day basis.  
23 That's what I mean by managerial  
24 agreement.

1 Q. Do you recall any other  
2 types of documents that supported your  
3 opinion in that case?

4 A. Sorry. Help me. Which case  
5 are we talking about particularly now?

6 Q. Which case were you talking  
7 about, when you -- managerial --

8 A. So in my immediate last  
9 answer I was talking about the NYSEG case  
10 in upstate New York.

11 Q. The what case?

12 A. NY -- New York State  
13 Electric and Gas, the case in Rochester,  
14 New York.

15 Q. Right. Okay. That's the  
16 case that I thought we were on as well.

17 A. Good. Okay. Good.

18 Q. Were there any other  
19 categories of documents that you looked  
20 at that supported your opinion?

21 A. In that case? There were --  
22 the documents in all of these cases, but  
23 I think particularly NYSEG, there were  
24 massive amounts of documents, boxes and

1 boxes. So yes, I relied on hundreds, if  
2 not thousands of documents.

3 There -- so -- and that --  
4 it just -- essentially the historical  
5 record of the period, the legislative  
6 history of the Public Utility Holding  
7 Company Act, which described the  
8 relationship between public utilities and  
9 their various operating subsidiaries in  
10 the era prior to the passage of the  
11 Public Utility Holding Company Act during  
12 the Roosevelt administration, those sorts  
13 of documents.

14 Q. Apart from legislative  
15 history documents, what categories of  
16 company documents did you rely on to  
17 reach your opinion in that case?

18 A. There was some company  
19 documents. The -- it was a very -- the  
20 case occurred -- was, from a historical  
21 period, a very long time ago, so a lot of  
22 the documents were missing.

23 I don't recall with  
24 specificity what the documents were,

1 but -- but -- so I don't recall  
2 specifically what -- what the actual  
3 corporate records were. I recall there  
4 were some corporate records. I just  
5 don't recall with specificity what those  
6 records were in which case.

7 Q. All right. So apart from  
8 the managerial agreements and the  
9 legislative history documents, do you  
10 have any further recollection of the  
11 documents that you reviewed in that case  
12 that supported your opinion?

13 A. Well, there are a lot of  
14 documents. I don't recall specifically  
15 what they were, what the documents were.  
16 I just have a distinct recollection that  
17 there were -- it was a -- that there was  
18 a very large number of documents. I  
19 don't recall what the content of those  
20 documents were, it was about a decade ago  
21 now, and I just don't remember.

22 Q. All right. I believe the  
23 next case that you mentioned in which  
24 your opinion could be construed as

1 consistent with piercing the corporate  
2 veil was public utilities company case in  
3 Connecticut; is that right?

4 A. Okay. Well, I definitely --  
5 I don't know if it was the next case. I  
6 definitely testified in a case in  
7 Connecticut involving piercing the  
8 corporate veil.

9 Q. Was that case in state or  
10 federal court?

11 A. Federal.

12 Q. Who was the judge?

13 A. I don't recall his name. He  
14 has tragically deceased at a very young  
15 age. Was a well known and very respected  
16 district judge who actually taught at  
17 Yale law school. And his name also  
18 escapes me at the moment.

19 But it -- like the other  
20 name, it may come back to me and I'll let  
21 you know.

22 Q. What year roughly?

23 A. This was -- again, I don't  
24 remember the year of the Connecticut

1 case. But it was -- it could have been  
2 as many as ten years ago. It could have  
3 been more.

4 Q. What was the dispute?

5 A. It was a reverse piercing  
6 case for a conduct that occurred prior to  
7 the Public Utility Holding Company Act  
8 involving alleged abusive control of  
9 subsidiaries in a public utility holding  
10 company that was national in scope as was  
11 permissible prior to the passage of the  
12 Public Utility Holding Company Act.

13 Q. Did that case go to trial?

14 A. I believe that it did. I'm  
15 pretty sure that I testified in trial in  
16 Connecticut, in New Haven, yes.

17 Q. What was the outcome of the  
18 trial?

19 A. I don't recall. I'm not --  
20 the case may have settled after my  
21 testimony. I don't know that it did.  
22 But I don't recall an opinion in that  
23 case sitting here right now. So I don't  
24 know.

1 Q. Do you recall what the  
2 outcome of the veil piercing issue was?

3 A. No.

4 Q. Do you recall the types of  
5 documents that you reviewed in that case  
6 to form the basis of your opinion?

7 A. No.

8 Q. You don't recall any of  
9 them?

10 A. Not with any specificity,  
11 no. I mean it would have been the same,  
12 historical documents, but I don't recall  
13 what they were.

14 Q. Even generally?

15 A. Even generally. I mean,  
16 other than the legislative history of the  
17 Public Utility Holding Company Act and  
18 the description of these relationships.  
19 There might -- I'm -- so I -- I mean I  
20 recall looking at documents. I don't  
21 know -- recall with specificity which  
22 documents I looked at in which case,  
23 because I don't recall which documents  
24 were available in which case, it sort of



1 varied from case to case, because the --  
2 they were very old documents pre-20th  
3 century. So it was -- it was kind of --  
4 attaining the documents was often a  
5 challenge.

6 Q. Do you recall generally how  
7 many times you've been retained as an  
8 expert?

9 A. On any subject in my whole  
10 life?

11 Q. Yes.

12 A. I can't recall with any  
13 specificity. I would guess maybe 75,  
14 maybe, maybe 80, maybe. Something in  
15 that range. Less than 100, more than 75.

16 Q. Have you told me about all  
17 of the cases in which you were retained  
18 and offered an opinion consistent with  
19 piercing the corporate veil?

20 A. I have offered -- I have  
21 provided you with all of the types of  
22 cases. They're all -- I think there may  
23 have been others frankly. I don't -- I  
24 can't -- sitting here right now, I simply

1     don't recall. I don't -- I don't recall  
2     any -- testifying -- I don't recall the  
3     names of any other cases. I may have  
4     testified in other cases involving  
5     piercing the corporate veil in ways that  
6     would have -- in cases in which I've been  
7     retained by plaintiffs' counsel. But  
8     sitting here right now, I don't recall.

9             Q.     Do you recall any other  
10     plaintiffs' counsel firms that have  
11     retained you that you have not already  
12     mentioned?

13            A.     With respect to piercing or  
14     just generally with respect to being  
15     retained by counsel in other kinds of  
16     cases representing the plaintiff? I  
17     don't understand.

18            Q.     Let's do both. Let's do  
19     piercing first and then generally.

20            A.     Okay. I believe I was  
21     retained in a piercing case by a law firm  
22     called Dowd Bennett somewhere in the  
23     Midwest. I don't recall where. But I  
24     believe that I was retained by that firm

1 in a piercing case. But I don't really  
2 recall the details. And I don't recall  
3 whether it was the plaintiffs' side or  
4 the -- it may have been the defense side  
5 actually now, that I think of it.

6 In terms of plaintiffs'  
7 retention, I mentioned McLane, I  
8 mentioned Dickstein Shapiro. There may  
9 have been another firm, but if so, I  
10 don't recall what it is.

11 Q. So you've told me all of the  
12 plaintiff retentions that you can recall  
13 generally as well, correct?

14 A. Yes, yes, ma'am.

15 Q. For the Dowd Bennett case,  
16 when was that?

17 A. I don't remember.

18 Q. Do you remember what decade?

19 A. Excuse me?

20 Q. Do you remember what decade?

21 A. I think it was within the  
22 last ten years.

23 Q. Where was the case pending?

24 A. I don't recall.

1 Q. Do you recall what part of  
2 the country it was?

3 A. No. I never traveled, I  
4 don't believe I was ever deposed. So I  
5 don't remember -- no, I don't remember  
6 where it was.

7 Q. Were you deposed in that  
8 case?

9 A. Not that -- I don't recall  
10 if I was. I don't think so. But I  
11 don't -- I don't remember.

12 Q. Did you testify at trial in  
13 that case?

14 A. I don't believe so. I don't  
15 recall.

16 Q. And you have no recollection  
17 of what your opinion was in that case?

18 A. Correct.

19 Q. Do you recall what the  
20 controversy was in that case?

21 A. No. I think there was a  
22 piercing issue. But I don't recall any  
23 details about what the piercing issue  
24 was. I don't recall any particular

1 facts.

2 Q. What are the other types of  
3 opinions that you have offered separate  
4 and apart from veil piercing?

5 A. I have -- so my areas of  
6 expertise are corporate governance,  
7 securities regulation, banking. I've  
8 testified in cases about, kind of what I  
9 would call entity theories. For example,  
10 I testified in a case involving a very  
11 high ranking banking officials who had  
12 left a -- the bank that they worked for  
13 and had organized another bank. And the  
14 issue -- the nature of the new corporate  
15 organization that they had formed and  
16 whether or not the functions that they  
17 were performing as officers and directors  
18 of this new organization were the kinds  
19 of functions that were captured in the  
20 covenant not to compete agreement that  
21 they had entered into with the -- with  
22 their former employer.

23 I've testified about issues  
24 relating to options back dating,

1 specifically with respect to the way that  
2 committees function on corporate boards  
3 and the authority of committees of  
4 corporate boards of directors to make  
5 decisions related to CEO or senior  
6 executive compensation in public  
7 companies.

8 I've testified in cases  
9 involving insider trading, issues  
10 involving various issues before the  
11 Securities & Exchange Commission. I've  
12 testified in issues regarding the  
13 economic nature and function of fiduciary  
14 duties in corporate organizations.

15 So, basically, broadly  
16 speaking issues involving corporate  
17 governance and control.

18 Q. Generally speaking, what's  
19 the nature of your testimony in the  
20 securities fraud cases, context of them?

21 A. Well, so there have been a  
22 variety. Some have to do with -- these  
23 have to do with the cases involving  
24 market timing and late trading. Just

1 generally a description of the mutual  
2 fund industry and the -- the way that  
3 mutual fund trades are executed and --  
4 and placed, and the -- the intersection  
5 between the SEC rules, primarily SEC Rule  
6 19C-4, and the way that the mutual fund  
7 industry sort of functions as a practical  
8 matter.

9 Q. And in those cases, are you  
10 generally testifying on behalf of the  
11 defense?

12 A. I think that's fair. I  
13 may not -- not -- maybe not exclusively,  
14 but I've definitely testified on behalf  
15 of the defense in these cases, yes.

16 Q. Of the 75 to 100 cases in  
17 which you've been retained, what  
18 percentage of those cases would you  
19 estimate was on behalf of defense?

20 A. I have no idea. I would say  
21 maybe -- certainly -- well, more than  
22 half, maybe two-thirds. I don't recall  
23 specifically.

24 Q. Do you have a list of all of

1 the cases in which you've been retained  
2 as an expert?

3 A. I think I have a list of  
4 just the last few years. I don't have a  
5 list of ever.

6 Q. That was not part of your  
7 resumé though; is that right? Has that  
8 document been produced?

9 A. Yes. I believe it's an  
10 exhibit -- I believe it's Exhibit  
11 Number 2 to my expert witness report. I  
12 think -- that's right. I think -- yeah.  
13 I thought I saw it there in your  
14 notebook. There we go.

15 Q. So I'm going to mark the  
16 expert report. And we'll get to that.  
17 But just for purposes of right now, this  
18 list, it appears, goes back to 2014.

19 Do you have a list that goes  
20 back further than that?

21 A. I don't believe so. Not a  
22 complete list, no.

23 MS. BAIG: All right. Why  
24 don't we take a short break.



1 THE VIDEOGRAPHER: Off the  
2 record at 10:25 a.m.

3 (Short break.)

4 THE VIDEOGRAPHER: We're  
5 back on the record at 10:47 a.m.

6 BY MS. BAIG:

7 Q. All right. Let's have this  
8 document marked as Exhibit 2. It's the  
9 expert report of Jonathan Macey.

10 A. Thank you.

11 (Document marked for  
12 identification as Exhibit  
13 Macey-2.)

14 BY MS. BAIG:

15 Q. If you could, turn to  
16 Exhibit 2, please. And this is the  
17 exhibit that we were just talking about  
18 that has a list of cases in which you've  
19 been retained that goes back to 2014.

20 Do you see that?

21 A. I do.

22 Q. And starting at the bottom  
23 of the list, so with the most recent  
24 case, can you please let me know what the

1 issue was in each of these cases. So  
2 beginning with the Blueblade Capital  
3 Opportunities case?

4 A. I will to the best of my  
5 ability. So you're asking me for the  
6 issues in each case? I'm sorry, just to  
7 be sure what your question is.

8 Q. Yes. What was your ultimate  
9 opinion?

10 A. Okay. Blueblade Capital  
11 Opportunities LLC involved the  
12 acquisition of a Delaware corporation in  
13 a merger transaction in which a number of  
14 hedge funds who are shareholders in the  
15 target entity asserted their statutory  
16 rights of appraisal under Delaware  
17 general corporate law, Section 221.

18 And I was asked to opine on  
19 the deal process and the issue of whether  
20 the CEO and board of directors of the  
21 target company, which was a company  
22 called SciQuest, had done everything  
23 appropriate and negotiated terms such  
24 that the shareholders of SciQuest would

1 receive a fair price for their shares in  
2 the sale of control merger transaction.

3 Q. And your opinion was?

4 A. My opinion was that there  
5 was an inadequate presale price discovery  
6 process. And that the -- under the  
7 particular facts of the case, the  
8 post-signing sales process was reasonable  
9 to permit the emergence of subsequent  
10 higher bidders had any such subsequent  
11 higher bidders existed.

12 Q. And you were retained on  
13 behalf of the plaintiff or the defendant?

14 A. I don't believe that these  
15 case -- this case had a -- had a  
16 plaintiff or a defendant.

17 These cases were brought  
18 under the Delaware appraisal statute. So  
19 one shareholder is bringing a statutory  
20 action asking that the share -- the value  
21 of their shares be appraised. And the  
22 judge is required under Delaware law to  
23 find, to calculate a fair price for the  
24 shares.

1                   So while it's kind of an  
2   adversarial proceeding, in that where one  
3   party is essentially arguing that the  
4   price should be different than the price  
5   that the other party is arguing, one  
6   wants a high price shall the other wants  
7   a low price, I don't know that it -- I  
8   don't know that it's accurate as a matter  
9   of lexicon or procedure to say there's a  
10   plaintiff and a --

11               Q.     Were you --

12               A.     -- and a defendant.

13               Q.     Were you testifying on  
14   behalf of the shareholder or the  
15   corporation?

16               A.     So I was testifying, not on  
17   behalf of the hedge fund, but on  
18   behalf of the -- I was retained by the  
19   company that had been -- that had been  
20   acquired, and by the company that  
21   acquired that company, which was  
22   SciQuest.

23               Q.     And what counsel retained  
24   you?

1           A.       I don't -- it was a Chicago  
2       law firm. I can't remember the name of  
3       it, a smaller one. I can get you the  
4       name. I've forgotten the name.

5           Q.       Going to the next case,  
6       United States of America, versus AT&T  
7       Inc.

8           A.       Okay. This case --

9           Q.       What --

10          A.       Sorry.

11          Q.       What was your opinion -- the  
12       gist of your opinion in this case?

13          A.       The gist of my opinion in  
14       this case was that when AT&T, when and if  
15       AT&T was to acquire a group of target  
16       firms, which included CNN and HBO and a  
17       number of firms, my -- that my testimony  
18       related to what the corporate governance  
19       of the combined entity would look like,  
20       what the economic incentives of the  
21       executives of the acquired entity would  
22       be, how much control the parent,  
23       particularly the CEO of AT&T, would have  
24       over the senior executives of the

1     acquired entities, and the extent to  
2     which these subsidiary companies in the  
3     combined new corporate group would  
4     operate as a -- as a single entity for  
5     profit-maximizing purposes or would  
6     operate completely independently.

7             Q.     And you were retained by  
8     whom?

9             A.     I was retained by the civil  
10    division of the United States Department  
11    of Justice.

12            Q.     Where was that case venued?

13            A.     United States District Court  
14    for the District of Columbia.

15            Q.     Going to the next case,  
16    Robinson Mechanical Contractors Inc.,  
17    versus PTC Group Holdings Corp. You were  
18    retained by whom in that case?

19            A.     I was retained by the  
20    defendant in this case. I was retained  
21    by the defendant.

22            Q.     PTC Group Holdings?

23            A.     I'm pretty sure that was the  
24    name of it. Yeah. But I'm not positive.

1 I believe so.

2 Q. That's what's listed here on  
3 this chart, correct?

4 A. That is what's listed on  
5 this chart, yeah. Yes.

6 Q. Do you have any reason to  
7 believe there's an error on the chart?

8 A. No, I don't think -- there's  
9 no error on the chart. Sometimes in my  
10 experience, you know, if you have a case  
11 on appeal, sometimes the plaintiff name  
12 goes second, for example in the Supreme  
13 Court. So, you know, I don't know that  
14 one can always go how they're listed.  
15 Maybe you can. But in any event, I have  
16 no reason not to believe it was PTC Group  
17 Holdings Corp.

18 Q. Okay. Do you -- you do have  
19 a recollection that you were not retained  
20 by Robinson Mechanical Contractors,  
21 correct? Or are you uncertain?

22 A. I was retained by one of the  
23 parties. I don't remember which one. I  
24 think it was PTC Group Holdings. I don't

1 remember who was the plaintiff and who  
2 was the defendant. It looks from the way  
3 the parties are aligned with respect to  
4 the V in the case, that it was PTC Group  
5 Holdings. I have no reason to disbelieve  
6 that. I just don't have a specific  
7 recollection sitting here right now.

8 Q. What was the gist of your  
9 opinion in this case?

10 A. It had to do with -- I think  
11 this was a piercing case involving  
12 testimony on my part about ordinary and  
13 customary behavior among parents and  
14 subsidiaries and appropriate economics of  
15 corporate control and the public policy  
16 issues related to corporate governance  
17 and corporate control.

18 Q. Did your opinion support  
19 piercing the corporate veil or not  
20 piercing the corporate veil?

21 A. To the best of my  
22 recollection, my opinion supported not  
23 piercing the corporate veil.

24 Q. And who retained you in that



1 case, which counsel?

2 A. I believe it was that Dowd  
3 Bennett firm that we mentioned before,  
4 I'm pretty sure.

5 Q. And you don't recall whether  
6 or not the court decided to pierce the  
7 corporate veil or not; is that right?

8 A. Correct.

9 Q. Moving to the next case, the  
10 2016 CaremarkPCS Health LLC versus  
11 Walgreens case.

12 Do you see that?

13 A. I do.

14 Q. Is this the case for which  
15 you were retained on behalf of Walgreens?

16 A. Yes, it is.

17 Q. And what was the gist of  
18 your opinion in this case?

19 A. The gist of my opinion in  
20 this case was that -- that Walgreens was  
21 the -- as I recall, my -- Walgreens was  
22 the acquirer in the Walgreens-Alliance  
23 Boots M&A transaction, such that there  
24 was no change in control of Walgreens.

1 That the corporate governance  
2 infrastructure of Walgreens remained  
3 intact and the corporate board of  
4 directors of Walgreens and the management  
5 infrastructure and the shareholding  
6 configuration was such that after the  
7 transaction there had not been a --  
8 excuse me, a change of control of  
9 Walgreens.

10 Q. And what firm retained you  
11 in this case?

12 A. That was Bartlit Beck.  
13 There's a -- they have more words in the  
14 name -- names in the name, but Bartlit  
15 Beck something and something, in Chicago.

16 Q. Moving to the next page.  
17 Panattoni Development Company Inc. versus  
18 Scout Funds.

19 A. Okay.

20 Q. What was the gist of your  
21 opinion in this case?

22 A. This was, I believe, a  
23 piercing case in which I testified on  
24 behalf of the defendant. I think it was

1 a piercing case. It had to do with  
2 corporate control and governance.

3 Q. Did your opinion support  
4 piercing or not piercing the corporate  
5 veil?

6 A. I believe my -- I was  
7 retained by the defendants. And I  
8 believe that my testimony was that the  
9 behavior of the various corporate  
10 affiliates and subsidiaries and parents  
11 was not aberrant or -- or inconsistent  
12 with ordinary and customary corporate  
13 behavior.

14 Q. So your opinion supported  
15 not piercing the corporate veil, correct?

16 A. It was consistent with a --  
17 the defendant's position that the  
18 corporate veil should not be pierced.

19 Q. And who retained you in that  
20 case, what firm?

21 A. I -- I don't know. I can't  
22 recall. I think it was Jones Day, but  
23 I'm not -- I'm not positive.

24 Q. And you were retained on

1       behalf of Scout Funds?

2               A.       I don't remember. It might  
3       have been -- there might -- it might have  
4       been Panattoni, it might have been a  
5       counterclaim. But I don't specifically  
6       recall. I have this dim recollection it  
7       was Panattoni, but I'm not -- I don't  
8       recall with precision.

9               Q.       Do you remember the outcome  
10       of the veil-piercing issue in that case?

11              A.       I do not. I'm not -- if  
12       there was an outcome, I'm not aware of  
13       it.

14              Q.       And you did not testify at  
15       trial in that case?

16              A.       Correct.

17              Q.       For this entire chart where  
18       it says testimony given, you would  
19       indicate here if you testified at trial;  
20       is that right?

21              A.       Yes.

22              Q.       So if it just says  
23       deposition testimony, that means you did  
24       not testify at trial, correct?

1           A.       I believe that's right, yes.

2           Q.       Do you recall testifying at  
3 trial in any of these?

4           A.       Well, I recall in 2014  
5 testifying in Spokane, Washington, in the  
6 Stanley against Sterling Financial Corp.  
7 case. And that's -- during the -- that's  
8 the only case I remember testifying in  
9 trial about.

10          Q.       Okay. So moving up the list  
11 to the Future Select versus Tremont Group  
12 case. What was the gist of your opinion  
13 in that case?

14          A.       Sitting here right now, I  
15 have no recollection of that case. I  
16 don't recall what the issues were, who  
17 retained me. I just don't remember.

18          Q.       Moving up to the Paolo  
19 Moreno versus SPX Entertain -- sorry, SFX  
20 Entertainment case, what was the gist of  
21 your testimony in that case?

22          A.       This was a case involving  
23 allegations of breach of fiduciary duty  
24 and breach of contract within the context

1 of a corporation that was prominent in  
2 the -- I believe it's the EDM industry,  
3 electronic dance music. And this was an  
4 issue having to do with fiduciary duties  
5 owed to minority investors who were also  
6 people who worked within the company  
7 and -- and contributed to its formation.

8 Q. So was this a case between  
9 investors and -- and a company?

10 A. I believe it would be more  
11 accurately characterized, Counselor, as a  
12 case involving a dispute among investors.  
13 Investors suing one another.

14 The company may have been  
15 named, but the -- the real parties and  
16 interests were kind of the founding  
17 investors in this -- in this enterprise,  
18 as I recall.

19 Q. And who retained you in that  
20 case?

21 A. It's a law firm in Los  
22 Angeles whose address is on the Avenue of  
23 the Stars. They have a big active First  
24 Amendment practice. But I'm blanking on

1       their name. It will come to me.

2                       Incidentally, I told you I  
3       would -- I would -- I promised you I  
4       would tell you if I remembered the name  
5       of the lawyer at Dickstein and Shapiro  
6       who retained me before the break. It was  
7       David Elkin.

8               Q.       What case was that again?

9               A.       That was in the -- I believe  
10      it was in that Florida case that we  
11      talked about and also in the New York  
12      State Electric & Gas case. And I believe  
13      also in the Connecticut case.

14                    I think I was -- when he was  
15      at Dickstein and Shapiro, I think I was  
16      retained by him, say, three or four  
17      times.

18              Q.       Do you know what firm he's  
19      with now?

20              A.       He went from Dickstein and  
21      Shapiro to the Orrick firm. I'm not sure  
22      that he's there now, but I have no reason  
23      to believe that he isn't. I haven't been  
24      in contact with him since he left

1       Dickstein and Shapiro.

2               Q.       Have you been retained by  
3       the Orrick firm?

4               A.       I seem to recall I did  
5       briefly do some work with the Orrick firm  
6       on a case that kind of moved over from  
7       Dickstein and Shapiro to Orrick. But I  
8       believe that case transferred to another  
9       set of lawyers who I continued to work  
10      for. But so I did -- I did remember  
11      having some interaction with the Orrick  
12      law firm, but -- but -- but it was kind  
13      of in the middle of a case as I recall.  
14      And -- and I don't have any interactions  
15      with them any -- any longer.

16              Q.       Moving up on this list to  
17      the -- to the next case, the 2015 case,  
18      In the Matter of Office of the  
19      Comptroller of the Currency versus James  
20      E. Plack?

21              A.       Right.

22              Q.       Do you recall who retained  
23      you in that case?

24              A.       I don't. It was a



1 Washington law firm, I don't recall which  
2 one. A smaller firm. I don't remember  
3 the name of it.

4 Q. Do you recall who you were  
5 retained to represent?

6 A. James E. Plack. I was -- I  
7 was retained as an expert witness by the  
8 law firm that was representing James E.  
9 Plack.

10 Q. And what was the gist of  
11 your opinion there?

12 A. The gist of my opinion was  
13 that, as I recall, were that -- was that  
14 James E. Plack, who was the CEO of a --  
15 either a bank or a mortgage company, had  
16 acted in a way that was consistent with  
17 appropriate corporate behavior for  
18 someone in his position in light of the  
19 kinds of transactions that the bank was  
20 engaged in or the financial institution  
21 was engaged in.

22 Q. And he was the defendant in  
23 that case?

24 A. I'm sorry?

1 Q. He was the defendant in that  
2 case?

3 A. Correct, yeah, sorry.

4 Q. And what were the  
5 allegations against him?

6 A. That he had entered into  
7 improper trades with other firms in which  
8 one bank transferred assets, mortgage  
9 interest to another financial institution  
10 and received assets in return in  
11 transactions that the comptroller of the  
12 currency alleged resulted in the  
13 misrepresentation of the financial  
14 results of the financial institution.

15 Q. Moving to the next case on  
16 the list. We have George L. Miller,  
17 Chapter 7 trustee, versus Kirkland &  
18 Ellis.

19 Do you see that?

20 A. I do.

21 Q. And you were retained by  
22 Kirkland & Ellis in this case?

23 A. No.

24 Q. Who were you retained by?

1           A.       I think it's a San Francisco  
2       law firm with the name Fox in it. I'm  
3       trying to remember now.

4           Q.       Were you retained on behalf  
5       of Kirkland & Ellis?

6           A.       Yes.

7           Q.       And what was the gist of  
8       your opinion here?

9           A.       I can't -- I don't recall  
10      that. I don't recall any of the facts of  
11      this case. I don't remember why  
12      Kirkland -- Kirkland & Ellis was being  
13      sued by the trustee in a bankruptcy  
14      proceeding, but I don't remember -- I  
15      don't remember why.

16          Q.       So you don't remember  
17      anything about the controversy in that  
18      case?

19          A.       Nothing. I have a vague  
20      recollection it may have something to do  
21      with a private equity fund, but I don't  
22      recall beyond that.

23          Q.       Did you collaborate with  
24      anybody with respect to your work on that

1 case?

2 A. No.

3 Q. So you did it all yourself?

4 A. Well, to the -- I performed  
5 in that case in exactly the same manner  
6 I'm performing in this case. I did -- I  
7 reviewed the documents myself and  
8 prepared my -- the expert report myself,  
9 and did not have any collaboration or  
10 assistance or employees or agents or  
11 anything of that nature.

12 Q. Okay. But you don't  
13 remember anything further regarding the  
14 dispute in that case?

15 A. Nothing.

16 Q. Or the gist of your opinion  
17 or the basis of your opinion?

18 A. No. I don't even remember  
19 what the case was about. I don't  
20 remember what they were -- what the  
21 dispute was about.

22 I could also be wrong about  
23 who retained me. I think it might have  
24 been -- I may be mistaken. It might have

1     been a New York -- a smaller New York  
2     firm. I don't remember who retained me  
3     in that case either, frankly.

4             Q.     Do you recall the outcome of  
5     that case?

6             A.     I'm unaware -- if there was  
7     an outcome, I'm unaware of what it was.

8             Q.     Moving up to the next item  
9     on the list. We have State versus --  
10    State of Connecticut versus the  
11    McGraw-Hill Companies and Standard &  
12    Poor's. Do you recall the gist of your  
13    opinions in this case?

14            A.     I do.

15            Q.     And what was that?

16            A.     This was a case brought  
17    against the rating agency Moody's, which  
18    was owned by McGraw-Hill Companies, and  
19    Standard and Poor's by the State of  
20    Connecticut for violating state consumer  
21    fraud laws with respect to credit ratings  
22    that these credit rating agencies had  
23    issued for mortgage-backed securities and  
24    collateralized debt obligations during

1 the period leading up to and during the  
2 '07, '08 financial crisis.

3 Q. And you were retained on  
4 behalf of whom?

5 A. The State of Connecticut.  
6 The Office of the Attorney General of the  
7 State of Connecticut. That would be the  
8 plaintiff in this case.

9 Q. Do you remember the outcome  
10 of this case?

11 A. Yes. I believe those cases  
12 settled, or that case settled.

13 Q. Moving to the next item on  
14 the list, we have New York versus Maurice  
15 Greenberg?

16 A. Yes.

17 Q. Do you remember the gist of  
18 your opinion in this case?

19 A. Yes.

20 Q. What was that?

21 A. This opinion related to an  
22 evaluation of Maurice Greenberg's tenure  
23 as chairman and chief executive officer  
24 of the AIG group of insurance companies

1 prior to his departure from the -- his  
2 position on the board of the company. He  
3 had been sued by Elliott Spitzer, the  
4 then Attorney General of the State of New  
5 York, and in litigation related to  
6 violations of a New York statute called  
7 the Martin Act.

8 Q. But what was the gist of  
9 your opinion in the case?

10 A. The gist of my opinion in  
11 that case had to do -- related to  
12 examining Maurice Greenberg's role as CEO  
13 and chairman and to determine -- my  
14 opinion was that he acted in a normal and  
15 appropriate way consistent with ordinary  
16 and customary behavior of CEOs of large  
17 public corporations in terms of the way  
18 that he did his job and essentially that  
19 he did not micromanage the business. I'm  
20 not looking at that thing but --

21 Q. That's okay. There's people  
22 on the phone that might not want to see  
23 my scribble.

24 And I take it that you were

1 retained on behalf of Maureen Greenberg?

2 A. That's correct.

3 Q. And what was the outcome of  
4 that case?

5 A. I believe the case settled.  
6 I'm not entirely sure. But I believe  
7 there was a settlement in the case, or  
8 the charges were dismissed, or -- I don't  
9 specifically recall.

10 Q. Moving to the next item  
11 there's Florida Power Corporation versus  
12 First Energy.

13 What was the gist of your  
14 opinion in that case?

15 A. That was the case that we  
16 talked about before, the break that  
17 involved a Public Utility Holding Company  
18 Act case. And I testified -- I was  
19 retained by the law firm representing the  
20 plaintiffs to testify about corporate  
21 control, piercing the corporate veil,  
22 alter ego doctrine issues.

23 Q. We've discussed that one in  
24 depth already.



1 Moving to the next item.

2 2014 case, Heidi Stanley versus Sterling  
3 Financial Corporation. What was the gist  
4 of your testimony in this case?

5 A. The gist of my testimony  
6 related to the conduct of the officers  
7 and directors of a corporation, in this  
8 case, Sterling Financial Corporation,  
9 that had dismissed an employee, and just  
10 to describe the way that corporations  
11 work and the way that personnel decisions  
12 are made within corporations from a  
13 corporate governance perspective.

14 Q. Did you represent the  
15 employee or the corporation?

16 A. No. I wasn't -- I was an  
17 expert witness. I didn't represent  
18 any --

19 Q. Sorry. I meant, were you  
20 retained on behalf of the employee or the  
21 corporation?

22 A. I was retained by the law  
23 firm that was representing the  
24 corporation.

1           Q.       When you described your  
2       testimony, you stated that it was to  
3       describe the way that corporations work.  
4       But what was the gist of your ultimate  
5       opinion in that case?

6           A.       That's the best I can  
7       recall. I don't recall my opinion with  
8       any more specificity. I don't recall  
9       what motivated my retention or what I  
10      thought motivated my retention or what  
11      the nature of my opinion was. I simply  
12      don't recall.

13          Q.       You don't recall how your  
14      opinion assisted the corporation in its  
15      case?

16          A.       I believe that -- it is  
17      my recollect -- so my recollection is  
18      that there was, in this case, a holding  
19      company that owned an operating company.  
20      And the question in the case had to do  
21      with which of these entities actually  
22      fired the plaintiff, Heidi Stanley, and  
23      whether the holding company and certain  
24      directors of the holding company could be

1     named in a lawsuit claiming that there  
2     had been a wrongful discharge of someone  
3     who is not an employee of the holding  
4     company, but was an employee of the  
5     operating company, which was a, as I  
6     recall, some kind of a financial  
7     institution, a bank or a savings and loan  
8     or something.

9             Q.     And did your opinion support  
10    that the directors of the holding company  
11    could be named or could not be named?

12            A.     I think it was -- it was a  
13    little more tangential than that. I  
14    think it had more to do with what's the  
15    difference between a holding company and  
16    a regular and an operating company and  
17    what are the various corporate governance  
18    responsibilities of each of these  
19    entities.

20                   And -- but it was -- but my  
21    testimony was offered into evidence by  
22    the lawyers for the defense, for the --  
23    for the defendants, or people who --  
24    entities that were named as defendants.

1 Q. Were those defendants the  
2 holding company?

3 A. I believe that the  
4 defendants were the holding company as a  
5 corporate juridical entity. I believe  
6 there were certain individuals named  
7 personally, but I'm not positive of that.  
8 I simply can't recall. It may have been  
9 the case.

10 Q. So you don't recall whether  
11 you were retained on behalf of the  
12 holding company or not?

13 A. I believe I was obtained --  
14 I was obtain -- I was retained -- I  
15 believe I was retained on behalf of one  
16 or more of the corporate entities  
17 involved. I don't specifically recall.

18 Q. So you don't recall whether  
19 it was the holding company or a --  
20 a different --

21 A. Right.

22 Q. -- different entity?

23 A. That's correct, I don't  
24 recall.

1 Q. Do you recall whether your  
2 ultimate opinion supported that the  
3 directors of the holding company could be  
4 named or not?

5 A. I don't recall.

6 Q. Moving to the next item.  
7 The Edgar Bachrach versus Bachrach  
8 Clothing Holding Corporation. Do you  
9 recall the gist of your opinion in this  
10 case?

11 A. I do not.

12 Q. Do you recall what the issue  
13 of dispute was in this case?

14 A. No, I don't recall what  
15 the -- what it was about at all.

16 Q. Do you recall what firm  
17 retained you in this case?

18 A. I do not.

19 Q. Where you have here "Expert  
20 report served as direct testimony," where  
21 does that refer to, at trial?

22 A. I don't really -- I believe  
23 that I did not physically appear in the  
24 courtroom. I believe what this means is

1     that my expert report was introduced into  
2     evidence and -- and served as a  
3     substitute for direct testimony by me.  
4     And that then I was cross-examined before  
5     a court reporter, but not during the  
6     trial, in a different -- just in a court  
7     reporter's -- before a court reporter in  
8     a kind of a setting such as this, more  
9     like a deposition and outside of a  
10    physical courtroom. That's my  
11    recollection.

12               Q.     You don't recall anything  
13    about what this case was about?

14               A.     No, I don't recall that --  
15    no, I don't. I don't recall the -- nor  
16    do I recall the redirect examination  
17    before a court reporter. That's just  
18    what I believe those words mean sitting  
19    here right now.

20               Q.     Did you create this -- this  
21    chart?

22               A.     Yes.

23               Q.     When did you create this  
24    chart?

1           A.       Well, I maintain this chart  
2       and kind of continually edit it and  
3       update it. So I -- it was created a very  
4       long time ago. And I keep it, you know,  
5       when I testify in a new matter, like  
6       after today, I will go back and put in  
7       2019 and add in this case. And then when  
8       2020 comes, I'll delete the 2014 cases to  
9       keep it up -- to keep it appropriate.

10           Q.       So do you have a chart that  
11       goes back beyond 2014?

12           A.       No. No. So I just -- I  
13       keep this one chart.

14           Q.       And you just started keeping  
15       it in 2014?

16           A.       No, no. This chart  
17       represents the edited version of the  
18       first chart I ever created.

19           Q.       So do you still have the  
20       first chart you ever created?

21           A.       Well, this is the first  
22       chart I've ever created. It's just  
23       edited to look like what it -- the way it  
24       looks now. In other words, it's a Word

1 document, so I will put -- I will delete  
2 May 10, 2019, and write in, if I prepare  
3 a new report, whatever the date of the  
4 new report is, and I will add in my  
5 testimony creating -- it's in a Word  
6 document. I believe I'll add a new row  
7 for each additional item. And then I  
8 will delete the old rows and then save  
9 the document.

10 Q. Do you have any list of  
11 cases in which you've been retained that  
12 goes back beyond 2014?

13 A. I don't believe so.

14 Q. So you have no record at all  
15 of any of your retentions prior to 2014?

16 MS. LEVY: Objection. The  
17 rules require four years back and  
18 that's what he's provided.

19 MS. BAIG: I'm entitled to  
20 ask him whether he has any record  
21 at all --

22 MS. LEVY: He's answered  
23 that question already.

24 MS. BAIG: Well, I have --



1 MS. LEVY: You can keep  
2 asking all you want. You can  
3 answer the question again,  
4 Professor.

5 BY MS. BAIG:

6 Q. Do you have any record of  
7 any of your retentions that goes back  
8 prior to 2014?

9 A. So, what -- help me out to  
10 understand what you mean by a record.

11 Q. Do you have any records that  
12 show which case -- in which cases you've  
13 been retained prior to 2014?

14 A. Okay. So let me answer it  
15 this way. So when I'm retained I have  
16 a -- I keep documents in files on my  
17 computer. And I have a file called  
18 "Active File," so this case would be in  
19 the active file.

20 And I have a file called, I  
21 don't know, I think it's called "Inactive  
22 Files." And so when, if this case were  
23 to end, I would move this -- documents  
24 related to this case over to my inactive

1 file.

2 I don't think that list is  
3 complete. I haven't done it with, you  
4 know, exact, you know, in every single  
5 case. But many of my prior retentions,  
6 you know, are in the inactive file. I --  
7 and, you know, I don't know. Sometimes  
8 my reports are in those files. But, you  
9 know, many cases in which I've testified  
10 in the past are listed in this inactive  
11 file. I can't say that it's complete,  
12 but it will have more than -- it will  
13 have cases that are not on this list, I  
14 guess is what I was saying in response to  
15 your question.

16 Q. And roughly how far back  
17 does it go? To the beginning of your --  
18 does it go all the way back to the  
19 beginning of --

20 A. So I left Cornell and  
21 went --

22 Q. Hang on -- the beginning of  
23 your work as an expert?

24 A. I apologize for

1 interrupting.

2 Q. That's okay.

3 A. No. So I started as an  
4 expert before I got to Yale. This  
5 file -- I didn't create this kind of more  
6 organized system until after I was -- I  
7 had moved from Cornell law school to Yale  
8 law school which was around 2004. And  
9 then it started somewhere after that.

10 So there are certainly some  
11 retentions that are older that I don't  
12 have. Cases which -- you know, so I -- I  
13 don't remember exactly when I started.  
14 It was sometime subsequent, I think, to  
15 2004.

16 Q. So, does your inactive file  
17 have a summary index?

18 A. No.

19 Q. So if you go onto your  
20 computer and you go into the inactive  
21 file, can you see a list of all the  
22 cases?

23 A. No, I don't think -- I don't  
24 know, I have to picture it. I mean,

1     you -- so if you went into the inactive  
2     file, it would be whatever the drive  
3     would be, say U drive, inactive file.  
4     You know, it would be -- it would say  
5     something -- it would be -- there would  
6     be, you know, there would be some  
7     identifier. Would be -- you know, I  
8     have a -- for each of these, just in  
9     terms of my own personal reference, I  
10    will give cases, retention -- matters in  
11    which I was retained, a number like 89.  
12    So there will be Matter Number 89 and  
13    then some description. It's not done in  
14    a very uniform way.

15                   The -- the screen will be  
16    populated by files with names of that  
17    sort, if that's helpful.

18           Q.     There will be a description  
19    that allows you to figure out which case  
20    it was that Matter Number 89 is; is that  
21    right?

22           A.     Usually, yes. I mean it --  
23    or it will be -- there'll be some kind of  
24    description. Sometimes I just have to do

1 a word search for a party or something,  
2 if I want to find something.

3 But -- so not all -- but --  
4 so not -- not always. So for example,  
5 this might be -- I don't -- just by way  
6 of example. This case might show up as  
7 in Re National Prescription litigation.  
8 The names of the parties may not -- may  
9 not show up in that description. But  
10 something will show up in the description  
11 that's descriptive.

12 Q. Apart from your inactive  
13 file, do you have any other summary list  
14 of the cases in which you've been  
15 retained?

16 A. No.

17 MS. BAIG: Counsel, would  
18 you agree to produce a list of the  
19 cases in which this expert has  
20 been retained?

21 MS. LEVY: No. We'll agree  
22 to comply with federal rules and  
23 to do what plaintiffs have done in  
24 their cases. So if we want to

1           talk about a mutual agreement to  
2           go back further than the rules  
3           require, we can talk about that in  
4           a different context and offline.

5           MS. BAIG: Okay.

6       BY MS. BAIG:

7           Q.       Can you give me a list of  
8           the cases that you recall being retained  
9           in, starting from the beginning?

10          MS. LEVY: I'm going to  
11          instruct you not to answer that.

12          MS. BAIG: On what grounds?

13          MS. LEVY: It's not required  
14          by the rules, and he's already  
15          answered the question.

16          MS. BAIG: There's no valid  
17          basis for instructing him not to  
18          answer.

19          MS. LEVY: You're entitled  
20          to go back four years.

21          MS. BAIG: No. You're  
22          saying that I have no ability to  
23          ask this witness about prior  
24          testimony?

1 MS. LEVY: I mean, he has  
2 already testified.

3 You can answer to the extent  
4 that you know.

5 MS. BAIG: Yes.

6 MS. LEVY: Go -- you're  
7 welcome to use your time however  
8 you want. I'll --

9 MS. BAIG: Thank you.

10 MS. LEVY: If you've already  
11 answered the question, you don't  
12 need to answer again.

13 THE WITNESS: So just --  
14 that I'm --

15 BY MS. BAIG:

16 Q. That's -- I don't wish to go  
17 back through all of the cases that we've  
18 already discussed.

19 A. Okay.

20 Q. But --

21 A. Fair enough.

22 Q. -- I would like as complete  
23 a list that you are able to provide --

24 A. Okay.

1           Q.     -- of the cases that you've  
2     been retained.

3           A.     Okay. So I will -- I will  
4     now answer the question.

5                     I'm going to purposely not  
6     include cases we've already talked about  
7     like the -- whatever the -- you know,  
8     the -- you know, the cases on the -- you  
9     know, on the Index 2 that we already  
10    talked about and the cases that we talked  
11    about before the break.

12                    So what I'll try to do is  
13    think of cases that I've worked on as an  
14    expert, testified as an expert that  
15    are -- that we haven't talked about.  
16    Okay. So -- and I'll do the best I can.

17           Q.     Let's start -- try to -- try  
18    to do it to the best of your ability  
19    chronologically --

20           A.     Okay.

21           Q.     -- so we have some  
22    assemblage of order.

23           A.     Okay.

24                    MS. LEVY: Do not guess.



1           You can testify as to what you  
2           know and what you recall, but I  
3           will instruct you not to  
4           speculate.

5                   THE WITNESS: I testified as  
6           an expert witness for a person  
7           whose name I do not recall, who  
8           was being sued by the Securities &  
9           Exchange Commission for violating  
10          a bar on his ability to perform --  
11          to serve as an accountant before  
12          the SEC.

13                   And my testimony related to  
14          my opinion with respect to what it  
15          meant to testify as an accountant  
16          before the SEC in connection with  
17          the issue of whether the services  
18          that this person performed for his  
19          employer constituted acting as an  
20          accountant before the SEC.

21          BY MS. BAIG:

22                  Q.       And who were you retained on  
23          behalf of?

24                  A.       It was -- I believe it was

1 Brown -- I don't recall the name of the  
2 firm. It was a New York firm, fairly  
3 large. I don't recall the name of it.

4 Q. Which party were you  
5 retained on behalf of?

6 A. There was -- be the  
7 defendant, the accountant who's --  
8 against whom the bar on performing -- for  
9 practicing accounting before the SEC was  
10 being instituted.

11 Q. And the rough time frame of  
12 this?

13 A. 15 years ago, 10 years ago.  
14 I don't remember.

15 Q. What's the next case that  
16 you recall being retained by -- in?

17 A. So I testified as an expert  
18 witness in an insider trading case  
19 brought by the Securities & Exchange  
20 Commission against defendants from Texas  
21 named Wylie, W-Y-L-I-E. And this  
22 transact -- this case had to do with  
23 allegations that a swap transaction that  
24 the Wylies had engaged in while they were

1 the CEO and chairman of a public company  
2 involved the -- a transaction in  
3 connection with the purchase or sale of  
4 securities.

5 Q. And you were retained on  
6 behalf of which party?

7 A. By -- on behalf of the Wylie  
8 defendants.

9 Q. And what firm retained you?

10 A. It was a Washington firm, or  
11 maybe a New York firm. I don't recall  
12 the name of it.

13 Q. Do you remember what  
14 jurisdiction the case was pending in?

15 A. I believe it was the U.S.  
16 District Court for the Southern District  
17 of New York, but I'm not positive. It  
18 could have been DC actually. I'm not --  
19 I don't recall.

20 Q. Do you remember what the  
21 gist of your opinion was and how it  
22 helped the defendant, or how it was  
23 designed to help the defendant?

24 A. I would have to resist the

1 premise of your question. In this  
2 particular case, I don't believe my  
3 testimony helped the defendant. So just  
4 so that the record is clear.

5 My testimony had to do  
6 with -- with what -- what it means --  
7 what the -- I -- what it means to -- for  
8 a transaction to be in connection with  
9 the purchase or sale of securities as a  
10 matter of sort of ordinary lexicon.

11 Q. Well, you were retained by  
12 the defendant, correct?

13 A. Yes.

14 Q. So presumably they retained  
15 you because they thought that you could  
16 offer testimony which helped them in  
17 their case. Would you agree with that?

18 A. Well, it depends on -- if  
19 you're talk -- if you are -- if you and I  
20 are in agreement that we're talking about  
21 what the parties that retained me thought  
22 at the moment of the retention, then I  
23 would agree with you, yes.

24 Q. I see. So ultimately --

1 ultimately your opinion did not support  
2 the defendant's position? Is that -- is  
3 that what you're saying?

4 A. Well, you'd have to ask the  
5 defendants about that.

6 I believe -- it is my belief  
7 and understanding that -- that my  
8 testimony was construed as being  
9 unhelpful to the defendants. And by the  
10 way, sorry, I do recall the firm that  
11 retained me in that case. I said I  
12 forgot. It was Sussman Godfrey.

13 Q. And why is it your belief  
14 that -- that your testimony was construed  
15 as being unhelpful to defendants?

16 A. I'm happy to answer that.  
17 It's just going to be kind of a long  
18 answer. Is that okay?

19 Q. Sure. I just --

20 A. I don't know how to answer  
21 it any other way.

22 Q. -- want the gist of it. Why  
23 is it your belief that your testimony was  
24 construed as being unhelpful ultimately?

1           A.       Okay. So the defendants in  
2       that case had entered into what's known  
3       as a total return swap, in which they  
4       entered into essentially a contract with  
5       the then investment bank, now defunct  
6       firm, Lehman Brothers. And Lehman  
7       Brothers accepted a payment for these  
8       defendants. And in exchange for that  
9       payment for the defendants, Lehman  
10      Brothers guaranteed to provide them with  
11      a payment exactly equal to the economic  
12      return of an underlying equity security.

13                So these defendants entered  
14      into the swap transaction. If the stock  
15      went up, they got money. If the stock  
16      paid a dividend, they got money. If the  
17      stock went down, they didn't get any  
18      money and they lost the amount that they  
19      paid for the swap for Lehman Brothers.

20                The SEC's claim in the case  
21      was that this was -- that these  
22      defendants had material inside  
23      information about the company when they  
24      entered into the swap transaction. The

1 stock -- underlying stock price went up.  
2 And they got paid a lot of money.

3 At the time of the  
4 transaction, and this is no longer the  
5 case, but at the time of the  
6 transactions, swap transactions of this  
7 particular kind were not included in the  
8 definition of security under the federal  
9 securities fraud rules.

10 So in order for the SEC  
11 successfully to sue these defendants, the  
12 SEC had to show that the swap transaction  
13 was consummated in connection with the  
14 purchase or sale, not of the swap, but of  
15 the underlying equity securities.

16 So it turns out, as a matter  
17 of fact, that when Lehman Brothers  
18 entered into the swap transactions with  
19 the Wylies, Lehman Brothers determined  
20 obviously that they had financial  
21 exposure, because if the stock went way  
22 up, they would have to pay the Wylies  
23 money.

24 In order to deal with that

1 financial exposure, the Wylie -- sorry,  
2 Lehman Brothers went into the marketplace  
3 and actually bought the underlying equity  
4 securities in an exact -- in the exact  
5 amount that was the nominal amount of the  
6 underlying swap agreement, such that if  
7 the stock went up, that Lehman Brothers  
8 made money on the stock, that offset what  
9 they had to pay to the Wylies.

10 It turned out that in the  
11 actual legal contract, the swap agreement  
12 that Lehman Brothers entered into with  
13 the Wylies, purchasing the underlying  
14 stock as a hedge was contemplated in the  
15 swap agreement. It was part of the swap  
16 agreement. And, therefore it was very --  
17 therefore, I didn't feel that I could  
18 testify that -- that the swap agreement  
19 was not in connection with the purchase  
20 or sale of securities, taking into  
21 account these precise provisions of this  
22 codicil in the actual swap agreement.

23 So while none of this was,  
24 you know, while -- so essentially that --



1 I was deposed in the case, but I -- my  
2 testimony was not offered. It is my  
3 belief that it was not viewed as  
4 particularly helpful to defendants in the  
5 case ultimately, that as -- as I learned  
6 more about the case and my opinion  
7 evolved, that it was not that great of  
8 use to the -- to the defendants in the  
9 case.

10 Q. Do you know what the  
11 ultimate outcome was of that case?

12 A. I believe the case -- I  
13 don't -- no, actually -- I'm sorry. My  
14 recollection is that -- that, while I was  
15 no longer involved with the case, I think  
16 the case went to trial, and I think the  
17 Wylies were -- were found to have  
18 violated the SEC Rule 10(b)(5) in  
19 Section 10(b) of the Securities and  
20 Exchange Act of 1934.

21 Q. And do you recall roughly  
22 the time frame of that case?

23 A. No.

24 Q. Do you recall the judge?

1 A. No.

2 Q. Do you recall that this was  
3 approximately 10 or 15 years ago?

4 A. That's my recollection, yes.

5 Q. Any -- any more specificity  
6 on that?

7 A. No.

8 Q. What's the next case that  
9 you recall being retained in?

10 A. I was retained in a case a  
11 very long time ago, maybe 15 years ago  
12 now, involving a -- satellite television  
13 companies, namely DirecTV. And DirecTV  
14 had entered into a partnership agreement  
15 in Latin America, particularly in Mexico,  
16 related to the provision of satellite TV  
17 services in particular areas. And there  
18 was a plaintiff who was a significant  
19 minority shareholder in this joint  
20 venture with DirecTV, was arguing that  
21 there had been a breach of fiduciary duty  
22 in that DirecTV was essentially aiming  
23 satellites and taking market share in  
24 northern parts of Mexico that properly

1 belonged to the joint venture that the  
2 plaintiff had invested in and was seeking  
3 to take a larger than fair share of the  
4 revenues associated with that particular  
5 market for itself. So it was essentially  
6 a breach of fiduciary duty claim.

7 Q. And the gist of your opinion  
8 was?

9 A. My gist of my opinion  
10 related to the fiduciary duties that  
11 majority joint venture partners owed to  
12 minority joint venture partners. Whether  
13 in limited liability company, limited  
14 liability companies, the default rule is  
15 that fiduciary duties are owed to  
16 minority shareholders who have membership  
17 or equity interest in limited liability  
18 companies.

19 Q. Did your opinion support  
20 that there was or was not a breach of  
21 fiduciary duty?

22 A. My -- I was retained by the  
23 law firm representing the plaintiff, and  
24 I believe their view was that my

1 testimony was consistent with the  
2 plaintiff's theory that the fiduciary  
3 duty of loyalty had been breached with  
4 respect to that plaintiff.

5 Q. Do you remember what firm  
6 retained you?

7 A. Yes. It was the Cravath,  
8 Swaine & Moore law firm.

9 Q. Do you remember where this  
10 case was pending?

11 A. No.

12 Q. Do you remember what part of  
13 the country it was pending?

14 A. My -- I remember my  
15 deposition was taken in New York.

16 Q. Do you remember whether it  
17 was filed in state or federal court?

18 A. I don't recall.

19 Q. Are most of the cases in  
20 which you are retained filed in federal  
21 court?

22 A. I have never evaluated the  
23 cases in which I've been retained as an  
24 expert to determine which -- whether more

1 in state or federal court. If I were --  
2 so -- I don't know. There have been a  
3 significant number of cases in state  
4 court, a significant number of cases in  
5 federal court.

6 I would say that it's been a  
7 real -- a mix. I don't -- I don't know.  
8 I couldn't say which is more.

9 Q. What's the next case that  
10 you recall being retained in?

11 Actually, before we move on,  
12 do you recall who you worked with at  
13 Cravath?

14 A. Yes.

15 Q. Who?

16 A. There was a partner there,  
17 who I believe is still there, whose name  
18 is Julie North, N-O-R-T-H.

19 Q. Do you recall anyone else?

20 A. No.

21 Q. Okay. What's the next case  
22 that you recall being -- being retained  
23 in?

24 A. I was an expert witness for

1 a large accounting firm, I believe  
2 Deloitte, who was being sued as having --  
3 for having aided and abetted a securities  
4 fraud in the financial reporting by a  
5 provider of cable television TV boxes  
6 called Scientific Atlanta. And the  
7 question was what the -- what the -- the  
8 question in the case was what the  
9 culpability was of this -- of this  
10 accounting firm for the financial  
11 misreporting of earnings of the -- of the  
12 Scientific Atlanta or the other -- or the  
13 other cable television companies involved  
14 in the litigation.

15 Q. And what was the gist of  
16 your opinion on behalf of Deloitte?

17 A. I don't -- my testimony  
18 related to what it is that national  
19 accounting firms do, what an audit is. I  
20 don't recall my testimony with any  
21 greater specificity.

22 Q. Who retained you in that  
23 case?

24 A. That was also the Cravath

1 law firm, but a different lawyer who's  
2 now retired. Whose first name was Bud,  
3 and whose last name started with an S.  
4 But I don't remember what it was.

5 Q. And roughly what year was  
6 that?

7 A. This was -- this would have  
8 been in the late '90s, early 2000s, I  
9 think.

10 Q. And where was that case  
11 pending?

12 A. I don't recall.

13 Q. Do you recall what part of  
14 the country it was pending?

15 A. No. I recall being deposed  
16 in Manhattan. But I don't recall  
17 where -- what the -- where the actual --  
18 I never testified. I don't recall where  
19 the case was, so --

20 Q. And you don't recall who the  
21 judge was?

22 A. Correct.

23 Q. Do you recall if you  
24 testified at trial?

1           A.       I'm fairly certain that I --  
2       the case settled, there was no trial. I  
3       don't recall. I certainly don't believe  
4       I testified at a trial in that case.

5           Q.       What's the next case that  
6       you recall being retained in?

7           A.       I'm -- I recall -- generally  
8       speaking, I've been an expert witness in  
9       other cases, I've served in the expert  
10      witness role. But sitting here right  
11      now, that exhausts my recollection.

12          Q.       Okay. You don't recall any  
13      other cases that you've been retained in,  
14      as you sit here right now?

15          A.       Sitting here right now, no.

16          Q.       And if you wanted to refresh  
17      your recollection as to what other cases  
18      you've been retained in, what would you  
19      look at?

20          A.       I -- I suppose I would go  
21      back to that inactive file and -- and try  
22      to figure it out.

23          Q.       Have you ever testified  
24      before Congress?



1                   A.       Yes.

2                   Q.       On what -- how many  
3 occasions?

4                   A.       I don't recall. I'm sorry,  
5 I've never testified before the entire  
6 Congress, like all 435 people. But I've  
7 testified before committees of Congress.

8                   Q.       Okay. On how many  
9 occasions?

10                  A.       Five or six I suppose.

11                  Q.       All right. Can you walk me  
12 through those five or six instances  
13 please?

14                  A.       So I've testified several  
15 times about various insider -- proposed  
16 statutes regarding insider trading  
17 legislation.

18                           I've testified with respect  
19 to the role of credit rating agencies and  
20 the financial crisis. Those -- that's --  
21 those -- that's the testimony I  
22 specifically recall sitting here right  
23 now.

24                  Q.       What was the gist -- the

1 nature of -- of your opinions on which  
2 you were testifying before Congress?

3 A. So with respect to insider  
4 trading, my testimony essentially was  
5 that there is a distinction between the  
6 contours of the U.S. law of insider  
7 trading that is articulated by the U.S.  
8 federal courts in construing the federal  
9 securities law statutes and SEC  
10 Rule 10(b)(5) and that that -- the  
11 contours of those laws, those legal  
12 rules, are substantively different than  
13 the rule -- law of insider trading that  
14 the SEC, the Securities & Exchange  
15 Commission envisions the law of the U.S.  
16 So that we have essentially two kind of  
17 competing laws of insider trading in the  
18 United States, the law that the U.S.  
19 Supreme Court and the lower federal  
20 courts, particularly the Second Circuit,  
21 have articulated, and the law that the  
22 SEC has championed in its -- in briefs in  
23 those courts and in its SEC enforcement  
24 policy.

1 Q. And who asked you to testify  
2 on that occasion?

3 A. These would have been  
4 congressional staffers who were  
5 organizing hearings.

6 Q. What congressional staffers?

7 A. I don't recall any of the  
8 names.

9 Q. Do you recall what Congress  
10 members they were associated with?

11 A. I recall distinctly one was  
12 from Pennsylvania who was organizing  
13 hearings. But I don't recall that  
14 person's name or the name of the  
15 subcommittee.

16 Q. Do you recall any other --  
17 any others that asked you to testify?

18 A. I recall distinctly being in  
19 the -- in the -- you know, testimony  
20 before the senate banking committee, at  
21 which Elizabeth Warren was in attendance  
22 because she's now running for president.  
23 But I don't recall -- she was not sharing  
24 the hearings. And the testimony had to

1 do with, I think, certain consumer  
2 banking issues.

3 Q. But you don't recall who  
4 asked you to testify at that hearing?

5 A. That's correct. I do not  
6 recall who asked me to testify at that  
7 hearing.

8 Q. And you don't recall what  
9 Congress member --

10 A. Correct.

11 Q. -- that request was coming  
12 from?

13 A. That is correct.

14 Q. How did you come to learn  
15 that you were being invited or asked to  
16 speak there?

17 A. Generally speaking in  
18 situations such as this, I think either  
19 formally I received a telephone call from  
20 a staffer or someone working on a  
21 congressional staff or a subcommittee  
22 staff or a congressperson's staff, and we  
23 have a discussion about whatever the  
24 substantive issue happens to be that is

1 the subject of the hearing.

2 And then subsequent to that  
3 conversation, I will receive a formal  
4 letter requesting me to testify.

5 Q. And you don't recall who  
6 sent you that formal letter?

7 A. That's correct.

8 Q. And you don't recall whose  
9 office sent you that formal letter,  
10 correct?

11 A. That's correct. It would  
12 have been -- the letter itself would have  
13 been by the actual member of the House of  
14 Representatives or senator who was  
15 chairing the hearings, I believe. But I  
16 don't recall the names of the people who  
17 were requesting my testimony.

18 Q. And were you paid for your  
19 testimony?

20 A. Never -- I've never been  
21 paid for my testimony before any facet of  
22 Congress.

23 Q. When did you testify before  
24 Congress regarding insider trading?

1           A.       This would have been several  
2 years ago, maybe eight or so.

3           Q.       And how many times?

4           A.       With respect to insider  
5 trading, over the years, maybe three,  
6 three or four. I don't recall  
7 specifically.

8           Q.       And when did you testify  
9 regarding credit rating agencies?

10          A.       That would have been  
11 sometime subsequent to the financial  
12 crisis.

13          Q.       2009 or '10?

14          A.       So that would be my -- that  
15 would be my estimate, yes.

16          Q.       And do you recall the nature  
17 of your testimony on that issue?

18          A.       I believe my testimony with  
19 respect to credit rating agencies was  
20 that the economic incentives of credit  
21 rating agencies with respect to their  
22 work on residential mortgage-backed  
23 securities and CDOs, collateralized debt  
24 obligations, differed from the economic

1 incentives that motivated the credit  
2 rating agencies with respect to their  
3 delivery of credit ratings for  
4 traditional corporate issuers that were  
5 nonspecial purpose vehicles of the kind  
6 that issued the residential  
7 mortgage-backed securities or the  
8 collateralized debt obligation, such that  
9 there was more -- greater incentives on  
10 the part of the credit rating agencies to  
11 inflate the ratings of the special  
12 purpose vehicle entity issuers of  
13 collateralized debt obligations and  
14 residential mortgage-backed securities  
15 than the credit ratings agencies faced  
16 with respect to rating ordinary issuers  
17 of debt, such as a railroad or IBM or  
18 General Electric or something of that  
19 nature, an ordinary corporate issue where  
20 there was not a special purpose vehicle  
21 but an actual operating entity.

22 Q. And if you were asked to  
23 summarize that testimony for a fifth  
24 grader or someone who is non-finance, how

1 would you do that?

2 A. I would say that people who  
3 want to borrow money issue promises to  
4 pay, and that the credit rating agencies  
5 will provide a grade like AAA, or AA or  
6 A, to these promises to pay. And the  
7 higher the grade, the more likely the  
8 credit rating agency believes repayment  
9 will be made and that the people won't be  
10 unable to repay when time for repayment  
11 is due, and that the credit rating  
12 agencies in a kind of bad way inflated  
13 the grades of the -- which are also known  
14 as the ratings of the promises to pay  
15 that were issued by some issuers, some  
16 borrowers, in ways that they didn't  
17 inflate for other promissors to pay. How  
18 does -- does that work?

19 Q. That works. Do you recall  
20 who requested that you testify on that  
21 issue?

22 A. No.

23 Q. You don't recall anything  
24 about how you came to testify on that



1 issue before Congress?

2 A. Other than what I've  
3 testified. Some staffer called me, and,  
4 you know, it -- and, you know, typically  
5 it would be on the basis of an op-ed --  
6 of an editorial that I've written or an  
7 article that they've read that they  
8 believed was -- they were interested in  
9 pursuing a line of questions about. That  
10 would be the typical way. But I simply  
11 don't specifically recall.

12 Q. Do you have transcripts of  
13 your testimony before Congress?

14 A. I do not.

15 Q. Have you ever testified  
16 before a grand jury?

17 A. Never.

18 Q. Have you ever testified for  
19 the DEA?

20 A. The Drug Enforcement  
21 Administration? No.

22 Q. FDA?

23 A. I don't believe so, no.

24 Q. The CDC?

1 A. No.

2 Q. Any other governmental  
3 agencies?

4 A. Well, I've been retained as  
5 an expert witness on a couple of  
6 occasions by the Department of Justice.

7 I believe I served as an  
8 expert witness for the Securities &  
9 Exchange Commission, but I don't  
10 recall -- I don't recall specifically  
11 those matters.

12 I have certainly discussed  
13 testimony with the SEC. I don't recall  
14 if I've actually ever testified. Other  
15 government agencies, I testified before  
16 as an expert witness for other government  
17 agencies, the Texas State Department of  
18 Banking, the Connecticut Attorney  
19 General, the Attorney General of the  
20 State of Illinois, and some other states.  
21 I forget which.

22 Q. Were these in litigation  
23 matters that we've already discussed or  
24 were these in other matters?

1           A.       Well, so -- it may be better  
2       to take them kind of one at a time if  
3       that would be --

4           Q.       Sure. That's fine. Let's  
5       start with the Texas State Department of  
6       Banking.

7           A.       So a very long time ago, I  
8       was retained as an expert witness by the  
9       Texas State Department of Banking. The  
10      Texas State Department of Banking had  
11      brought a lawsuit against a bank alleging  
12      that the bank had violated state law  
13      rules which limit the amount of money  
14      that a bank could loan to a single  
15      borrower.

16                   The borrower's defense was  
17      that -- I'm sorry. I beg your pardon.

18                   The lender bank's defense  
19      was that the -- that the bank had not  
20      violated the limits on the amount of  
21      money that could be loaned to any one  
22      borrower because the lender had actually  
23      loaned money not to one borrower, but to  
24      two borrowers because the strip shopping

1 center that received -- received the  
2 proceeds of the loan was actually owned  
3 by two corporations, one corporation that  
4 owned half of the strip shopping center,  
5 I believe in Dallas, and the other  
6 corporation owned the other half of the  
7 strip shopping center.

8 So that for the purposes of  
9 calculating whether this bank in Texas  
10 had violated the statutory lending  
11 limits, the issue was essentially whether  
12 this should count as a loan to a single  
13 borrower or a loan to more than one  
14 borrower.

15 Q. And you were retained on  
16 behalf of whom?

17 A. The Texas State Department  
18 of Banking. It was an administrative  
19 proceeding.

20 Q. Against whom?

21 A. A bank and an officer of the  
22 bank, as I recall. I don't recall the  
23 name of the bank or the name of the  
24 officer.

1 Q. Okay. And what year was  
2 that, about?

3 A. A very long time ago. Maybe  
4 in the -- in 1990s. I don't specifically  
5 recall.

6 Q. Do you remember who retained  
7 you?

8 A. It was a woman who was an  
9 attorney in the enforcement division of  
10 the Texas State Department of Banking,  
11 but I don't recall that person's name.

12 Q. All right. What was the  
13 next item of testimony on behalf of  
14 governmental agencies?

15 A. So I was -- I signed  
16 retention agreements and was retained by  
17 a number of state attorneys general in  
18 connection with litigation against the  
19 credit rating agencies.

20 The only time that I was  
21 retained was -- sorry. I beg your  
22 pardon.

23 The only time that I -- I  
24 actually testified in a deposition was in

1 the Connecticut case.

2 I believe that there was a  
3 pool of funds from a variety of attorneys  
4 general that was pulled together and  
5 constituted the source of the fees out of  
6 which I was paid. And there were a  
7 number of states. I recall specifically  
8 interacting with the state of Illinois,  
9 who had another case that was further  
10 along. So I did work for that entity,  
11 the state -- the state of Illinois.

12 Q. What other states were you  
13 retained by in connection with that  
14 matter?

15 A. And this, again, was a long  
16 time ago. I don't recall. There was a  
17 state in the south that was involved in  
18 this. I believe it was Mississippi, but  
19 I don't specifically recall.

20 Q. Do you recall any others?

21 A. No.

22 Q. What time frame was that?

23 A. So this would have been  
24 after the financial crisis of '08 in the

1 '09, '10, '11, time frame.

2 Q. Do you know where that  
3 litigation was pending?

4 A. So there was litigation  
5 pending in state court in Connecticut,  
6 state court in Illinois. Many different  
7 states. Mississippi. Those are the  
8 particular jurisdictions that I recall.

9 Q. But the only case in which  
10 you testified was Connecticut's; is that  
11 right?

12 A. That's correct. I mean  
13 testified in deposition, that's correct.

14 Q. And you didn't testify in  
15 any trials?

16 A. That's correct. I believe  
17 these cases settled before trial. I  
18 believe there was a global settlement  
19 reached with respect to all of the  
20 states.

21 Q. And did you work solely with  
22 the AGs' offices or did you work with  
23 private outside counsel?

24 A. Solely with AGs' offices,

1 other than when I was deposed and the  
2 outside counsel for the credit rating  
3 agencies deposed me.

4 Q. Any other testimony that you  
5 can recall?

6 A. So I was retained as an  
7 expert witness a very long time ago by  
8 the Department of Justice civil division  
9 in litigation related to the so-called  
10 Winstar line of cases involving  
11 government liability for -- to investors  
12 in savings and loan associations that  
13 failed during the S&L crisis of the '80s,  
14 of the 1980s.

15 Q. Do you recall the gist of  
16 your opinion?

17 A. Yes.

18 Q. What was it?

19 A. The gist of my opinion had  
20 to do with the accounting for merger and  
21 acquisition transactions. And whether,  
22 when two savings and loan associations  
23 merged, it was -- it was appropriate from  
24 an economic substantive point of view to



1 record an item known as regulatory  
2 goodwill on the asset side of the balance  
3 sheet of the combined entity subsequent  
4 to the merger where the relevant  
5 regulatory agency, which at the time was  
6 the office of thrift supervision,  
7 approved the -- the entry of regulatory  
8 goodwill as an asset on the balance sheet  
9 of the merged entity.

10 Q. And what was the time frame?

11 A. This would have been in the  
12 '90s. Legislation in the wake of the  
13 U.S. Supreme Court's decision in Winstar.  
14 And so in the -- in the 1990s.

15 Q. Do you recall any other  
16 testimony?

17 A. No.

18 Q. Do you recall any other  
19 retentions that you have not already told  
20 me about, expert retentions?

21 A. No. And when you mentioned  
22 government agencies it jarred my memory  
23 with respect to the Winstar kind of  
24 cases, and the Texas case. But I don't

1 recall any others sitting here right now.

2 Q. For the Winstar line of  
3 cases, did you actually testify in  
4 deposition?

5 A. No.

6 Q. And you didn't testify in  
7 any trial?

8 A. Correct.

9 Q. Did you submit an expert  
10 report to the court?

11 A. I believe in that case I was  
12 a consulting witness. I provided reports  
13 to the attorneys litigating the cases. I  
14 don't believe that I'd served as a  
15 testifying -- I don't believe I was  
16 designated and I don't believe I served  
17 as a testifying expert in those cases.

18 Q. And do you recall where  
19 those cases were pending?

20 A. I was retained by what they  
21 called the main justice in Washington.  
22 And I believe there were many, many cases  
23 in lots of jurisdictions primarily in the  
24 Southwest, Texas, Arizona, but -- but in

1 other states as well. But I believe  
2 the -- the kind of focal point of the  
3 litigation was Arizona, Texas, and the  
4 Southwest.

5 Q. Do you recall who retained  
6 you?

7 A. There was a senior official  
8 in the Department of Justice whose -- I  
9 don't recall who. I think his name may  
10 have been Levy. But I'm not positive.  
11 L-E-V-Y.

12 Q. And what is your current --  
13 your current rate?

14 A. \$1,250 an hour.

15 Q. And how has that changed  
16 over the years?

17 A. It's gone up.

18 Q. Sure. But roughly, can  
19 you -- can you let me know how you came  
20 to arrive at that figure?

21 A. Well, I started, I believe  
22 my initial billing rate was \$500 an hour.  
23 Periodically, as we've discussed today,  
24 I'm retained as an expert witness in

1 cases. In the course of those retentions  
2 I learn about the -- not always, but  
3 often, I learn about the billing rate of  
4 the experts who -- other experts who have  
5 been retained in the case by other law  
6 firms. And I adjust my billing rate to  
7 be what I believe to be in line with what  
8 I deem to be current market rates on the  
9 basis of what these other experts are  
10 charging.

11 Q. And in your history of -- of  
12 being retained as an expert witness, have  
13 you ever collaborated with anybody in  
14 performing those services?

15 A. There have been retentions  
16 in my life in which the law firm  
17 retaining me has also retained an  
18 economic consulting firm like a firm such  
19 as a Lexicon or a Cornerstone Research,  
20 or something of that nature. And  
21 occasionally I've worked with some of  
22 those firms, I believe, in -- in  
23 litigation matters in the past.

24 Q. But you have never worked

1 with students or associates or colleagues  
2 in collaborating with your expert  
3 reports?

4 A. I have had actually -- I  
5 think I have a couple of times worked  
6 with a colleague, not on this case, but  
7 sometimes I've had a colleague who has  
8 been retained as an expert and I -- who's  
9 asked me to -- to collaborate. That --  
10 that has occurred as I recall.

11 Q. Who was that?

12 A. So I have a colleague who is  
13 a tax professor, Yai Listokin, and he and  
14 I have worked together on a couple of --  
15 of matters.

16 Q. But you have never had  
17 anybody who assists you in writing your  
18 expert reports or in reviewing materials  
19 in order to write your expert reports.  
20 You only --

21 A. That's correct. Never --  
22 that's correct.

23 Q. And who prepares your  
24 invoices?

1                   A.       I do.

2                   Q.       And do you send counsel  
3       invoices on a regular basis?

4                   A.       Are you asking me about this  
5       particular litigation matter or my  
6       general practice?

7                   Q.       In the litigation matter?

8                   A.       As I recall, my -- in this  
9       particular litigation matter, there's  
10      some -- there's a website run by some,  
11      like, internet service provider or  
12      something, and I log onto that website  
13      and agonizingly convert my invoices into  
14      some other format, and then upload them  
15      to, I believe -- to -- so to upload them,  
16      this is -- I follow a procedure that  
17      was -- has been specified in my retention  
18      letter. And that -- and I -- I submit my  
19      invoices in that way.

20                  Q.       And do you do that on a  
21      regular basis?

22                  A.       It's my practice to submit  
23      invoices sometime at the beginning of  
24      each month. That includes the billing

1 for my time and out-of-pocket expenses  
2 for the previous month.

3 Q. Do you know who the internet  
4 service provider is?

5 A. No. The name -- it has --  
6 there's something related to Serengeti, I  
7 think. Although I may be -- that may be  
8 the name of a park in South Africa. I  
9 may be confusing it. Anyway, there's  
10 something like that.

11 Q. And your rates are the same,  
12 whether you're reviewing documents or  
13 testifying in deposition or testifying in  
14 trial; is that right?

15 A. Currently at this time,  
16 that's correct. There have been -- that  
17 practice has evolved over time. But for  
18 the last several years, that's been my  
19 practice and policy, uniformly, yes.

20 Q. Do you need a break or do  
21 you want to keep going?

22 A. I could use a bathroom  
23 break, but I can go for ten minutes or  
24 so.

1 MS. BAIG: It's okay.

2 THE WITNESS: All right.

3 Thank you.

4 THE VIDEOGRAPHER: Off the  
5 record at 12:14 p.m.

6 (Short break.)

7 THE VIDEOGRAPHER: We are  
8 back on the record at 12:33 p.m.

9 THE COURT REPORTER: Counsel  
10 on the phone, you wanted to make a  
11 stipulation.

12 MS. CARDELÚS: Yes, this is  
13 Jen Cardelús at O'Melveny. And  
14 I'd like to record the parties'  
15 stipulation that one defendant's  
16 objection preserves objection for  
17 all other defendants.

18 MS. BAIG: That's fine.

19 (Document marked for  
20 identification as Exhibit  
21 Macey-3.)

22 MS. BAIG: Actually, let's  
23 have this CV marked as Exhibit 3.

24 BY MS. BAIG:



1           Q.     This is a true and correct  
2     copy of your current resumé; is that  
3     right?

4           A.     Yes.

5           Q.     And everything on here is  
6     accurate?

7           A.     To the best of my knowledge.

8           Q.     You have no corrections?

9           A.     Not at this time.

10          Q.     And no updates?

11          A.     That's correct, I believe.  
12     Let me just look.

13                     There's a -- it is possible  
14     that I have a couple of articles that  
15     have been published that would appear on  
16     Page 3 more recently, I believe. But  
17     maybe -- I believe I had a short article,  
18     the SMU Law Review -- no, it's here.  
19     Never mind. No, I believe it is  
20     up-to-date. I apologize.

21          Q.     Okay. Do you have any  
22     intention to publish anything in the next  
23     several months before trial?

24          A.     Yes.

1 Q. What do you plan to publish?

2 A. I have two articles that  
3 have been accepted for publication, which  
4 likely will be published prior to the  
5 trial, although obviously I don't know --  
6 I mean, not obviously -- but I don't know  
7 when the trial is. But I have a couple  
8 of articles. And I'm writing others. I  
9 have two that are, I would say, fairly  
10 far along in the production process. And  
11 they've been accepted for publication and  
12 are in the process of being edited. One  
13 of them is in page proofs.

14 Q. And what are those articles  
15 about?

16 A. One of the articles is about  
17 the nature of the corporation and an  
18 analysis of the way that the United  
19 States Supreme Court characterized the  
20 U.S. corporate form in a -- in a Supreme  
21 Court case of Citizens United involving  
22 corporate campaign -- corporate  
23 expenditures on political issues and  
24 political candidates and, et cetera.

1 Q. And what is the -- and who's  
2 publishing that one?

3 A. That's being published by  
4 the University of Wisconsin Law Review.

5 Q. And you're not sure when; is  
6 that right?

7 A. I believe it's imminent. I  
8 would say within the next -- I'd have to  
9 check with my co-author, but probably in  
10 the next three weeks.

11 Q. Who is your co-author?

12 A. His name is Leo Strine. He  
13 is the Chief Justice of the Delaware  
14 Supreme Court.

15 Q. How many articles have you  
16 published jointly with Chief Justice Leo  
17 Strine?

18 A. None. We have written this  
19 one, which is about to appear, and we  
20 have another one that we're working on.

21 Q. Haven't you collaborated  
22 with him on others?

23 A. No.

24 Q. I thought I saw his name in

1     your resumé somewhere, no?

2                   A.     Well, he might have been in  
3     a forthcoming or something. I don't  
4     know.

5                   Q.     Have you collaborated with  
6     him on any books?

7                   A.     No.

8                   Q.     Okay. And what is the  
9     nature of the second article that's  
10    forthcoming?

11                  A.     The second article is  
12    forthcoming in The Business Lawyer, which  
13    is an ABA publication, and it is -- it is  
14    an analysis of the economics of the  
15    statutory right of appraisal and what it  
16    means to determine the fair value for the  
17    stock of a corporation and how -- we have  
18    suggestions about how from an economic  
19    perspective courts -- state courts might  
20    approach the issue of -- they're called  
21    upon to determine in appraisal  
22    proceedings, which is what the fair value  
23    of the shares of an -- an acquired  
24    company actually are.

1 Q. In your view, do either of  
2 these forthcoming articles have any  
3 bearing on your opinions in this case?

4 A. I don't think that -- I  
5 don't think that the business lawyer  
6 article does really, but the -- so I  
7 actually cite in my expert opinion in  
8 this case on Page 9 in Paragraph 12 the  
9 forthcoming article with Chief Justice  
10 Strine. And so I do think there's  
11 probably some -- I do think there's some  
12 relevance, some way in which the analysis  
13 in that article is germane to issues in  
14 this case.

15 Q. There it is. So that's the  
16 article cited in Footnote 6, right?

17 A. Yes, correct.

18 Q. How is that article germane  
19 to the issues in this case?

20 A. So that article analyzes,  
21 and I will say takes a position on the  
22 kind of existential question of what is a  
23 corporation and whether or not a  
24 corporation, is a distinct legal entity

1 separate and apart from its shareholders  
2 that can enter into contracts, sue and be  
3 sued, have a particular duration of  
4 existence and otherwise be considered  
5 legally separate from its residual  
6 claimants, which is the economic term for  
7 equity holders or shareholders.

8 And it juxtaposes that view  
9 of the corporate form with the view of  
10 the corporate form articulated by the  
11 Supreme Court in the Citizens United  
12 case.

13 Q. And this article is not yet  
14 public?

15 A. I'm sorry?

16 Q. This article is not yet  
17 public, correct?

18 A. Public? Oh, no, it's quite  
19 public. If you look at Footnote 6, there  
20 are three links to different places that  
21 you can find this article on the  
22 internet. It's available on the  
23 University of Pennsylvania Law and  
24 Economics research paper website or the

1 Yale Law and Economics website or the  
2 Harvard Law School --

3 Q. Oh, great.

4 A. It's also --

5 Q. Okay. I thought you said it  
6 hadn't been published yet.

7 A. Well, so -- it's also  
8 available on the Social Science Research  
9 Network. It is -- these are, you know,  
10 kind of, what would be pre-publication  
11 versions that have been distributed at  
12 workshops or provided, you know, in the  
13 sort of academic world.

14 The final published  
15 version -- you're absolutely right. The  
16 final published version has not come out  
17 in the Wisconsin Law Review. And that  
18 should be out in the next few weeks.

19 But it -- so it -- in its --  
20 it doesn't appear in its final published  
21 form. But the -- a version that's  
22 virtually the same other than some  
23 typographical and bluebooking corrections  
24 can be found in those -- at those links.

1 Q. Okay. And anybody can  
2 access it?

3 A. Correct.

4 Q. Does that article have  
5 anything to do with piercing the  
6 corporate veil?

7 A. Well, it -- the article  
8 mentions the concept of piercing the  
9 corporate veil. And explains the  
10 connection between the doctrine of  
11 piercing the corporate veil and the legal  
12 recognition that corporations are  
13 separate juridical entities. So it  
14 definitely -- it definitely, as part of  
15 its analysis, considers the doctrine of  
16 piercing the corporate veil.

17 Q. Okay. Can you walk me  
18 through your education, please?

19 A. Yes. So I went to college  
20 at Harvard College and received a  
21 bachelor of arts in economics.

22 After college I worked for  
23 two years in New York in the finance  
24 industry. And then went to law school



1 at, Yale law school where I graduated in  
2 1982 and then went to work as a law clerk  
3 for a federal judge on the U.S. Court of  
4 Appeals for the Second Circuit.

5 Q. That was Judge Friendly?

6 A. Yes, Henry J. Friendly.

7 Q. And when you worked for two  
8 years in the finance industry, what years  
9 were that -- was that?

10 A. So that would have been '77  
11 to '79.

12 Q. And who did you work for?

13 A. I worked for what -- the  
14 entity then known as Bankers Trust  
15 Company, which has now been absorbed into  
16 Deutsche Bank. And then I worked for a  
17 small consulting firm called Lloyd Bush &  
18 Associates.

19 Q. And what did you do for  
20 those companies?

21 A. So for Bankers Trust  
22 Company, I served as a bond trader, an  
23 underwriter of municipal bonds, buying  
24 and selling general obligation bonds

1 issued by various states and  
2 municipalities in the U.S.

3 Then for Lloyd Bush &  
4 Associates, I worked as a consultant to  
5 municipalities and investment banks that  
6 were -- that were issuing mortgage-backed  
7 securities, securities where the payment  
8 of principle and interest on those  
9 securities was derived from payments by  
10 mortgage holders of the principle and  
11 interest due on their mortgages. And  
12 doing financial analysis to ascertain and  
13 determine whether the stream of cash  
14 flows, the stream of payments of  
15 principle and interest by people on these  
16 mortgage would be sufficient to make  
17 timely payments of the principle and  
18 interest on the bonds that were issued,  
19 to provide financing for the underlying  
20 houses under various stress conditions,  
21 such as high rates of prepayment or  
22 inflation or changing interest rates and  
23 that sort of thing.

24 Q. And after two years of

1     working in that capacity, you went to  
2     Yale; is that right?

3             A.     No. I spent my -- so I went  
4     to Emory law school in Atlanta for my  
5     first year, and then transferred at the  
6     end of my first year to Yale. So I did  
7     not spend my first year at Yale.

8             Q.     And after you graduated from  
9     Yale what did you do then?

10            A.     I clerked for Henry Friendly  
11    on the U.S. Court of Appeals for the  
12    Second Circuit.

13            Q.     For how long?

14            A.     A year.

15            Q.     And then -- and then what  
16    did you do?

17            A.     Then I joined the faculty at  
18    Emory law school in Atlanta as an  
19    assistant professor.

20            Q.     Assistant professor of what?

21            A.     Of law, sorry.

22            Q.     What type of law did you  
23    teach?

24            A.     I taught the basic course in

1 corporate law. I taught bankruptcy. I  
2 taught securities regulation. And I  
3 taught banking. Those were the primary  
4 courses that I taught as I recall at  
5 Emory.

6 Q. And you stayed at Emory for  
7 how long?

8 A. Three years.

9 Q. Then where did you go?

10 A. Then I went to the  
11 University of Virginia law school in  
12 Charlottesville, Virginia.

13 Q. And what was your position  
14 there?

15 A. Visiting associate professor  
16 of law.

17 Q. How long were --

18 A. As I recall.

19 Q. How long were you there?

20 A. One year.

21 Q. And what did you teach?

22 A. I taught business  
23 organizations and securities regulation.  
24 And I don't recall. I taught -- I think

1 I taught other courses, but I don't  
2 recall what they were.

3 Q. And that year was when, what  
4 year was that?

5 A. Let me see if I can pull it  
6 up. That would have been 1986 to 1987.

7 Q. And you were at Emory from  
8 1983 to 1986?

9 A. Correct.

10 Q. So you were clerking for  
11 Judge Friendly in 1982; is that right?

12 A. Correct. Well, I graduated  
13 from law school in June of 1982 and then  
14 went to work in the fall for Judge  
15 Friendly.

16 Q. Okay. And from 1980 -- what  
17 were you doing in 1988?

18 A. In 1988, I was a professor  
19 of law at Cornell University school of  
20 law in Ithaca, New York.

21 Q. Okay. And what did you  
22 teach there?

23 A. I -- at Cornell I taught  
24 business organizations, securities

1 regulation, banking. I taught a course  
2 in family law one time. I taught  
3 seminars related to corporate governance  
4 and corporate control. I believe I  
5 taught a bankruptcy class once. But my  
6 primary focus was in corporate law,  
7 corporate governance, and financial  
8 institutions and securities.

9 Q. And from there you went to  
10 the University of Chicago?

11 A. Correct.

12 Q. And what did you teach  
13 there?

14 A. Business organizations and  
15 banking.

16 Q. Were you also at this point  
17 in time being engaged as an expert  
18 witness?

19 A. In 1990?

20 Q. In that time frame, yeah.

21 A. I don't recall. I don't  
22 remember.

23 Q. Do you recall when your  
24 first engagement was?

1 A. No.

2 Q. Roughly.

3 A. It would have been late  
4 '80s, early '90s, I don't -- I don't --  
5 or mid '90s, I don't remember.

6 Q. So from Cornell you went to  
7 University of Chicago, correct?

8 A. Yes.

9 Q. Did you tell me what you  
10 taught there?

11 A. Yes. Well --

12 Q. Okay.

13 A. -- business organizations  
14 and financial institutions.

15 Q. Okay. And from there you  
16 went to work as a research fellow at the  
17 International Center For Economic  
18 Research in Turin, Italy; is that right?

19 A. Not exactly. So I worked at  
20 the International Center For Economic  
21 Research during periods of time when I  
22 was fully employed at U.S. law schools.  
23 I worked there when I was on sabbatical  
24 leave.

1 I -- so I had simultaneous  
2 appointments as a research fellow on at  
3 the -- what is known as the ICER, the  
4 International Center For Economic  
5 Research, while I was a law professor at  
6 Cornell.

7 Q. Okay. So you were not  
8 teaching at ICER, correct?

9 A. That is correct. I gave  
10 occasional lectures at universities in  
11 northern and northwest Italy, but I did  
12 not have -- did not teach a full course.

13 Q. And as a research fellow  
14 what were you researching?

15 A. I was researching corporate  
16 law articles. Law articles relating to  
17 corporate governance and corporate  
18 control and law, -- articles related to  
19 law and economics, the application of  
20 economic analysis to legal problems.

21 Q. And were those articles  
22 published?

23 A. Those articles would be  
24 reflected in my resumé, yes, under the



1 "Items Published."

2 Q. And in 1993 you were a  
3 visiting professor at Stockholm School of  
4 Economics; correct?

5 A. Yes, that is correct.

6 Q. And what did you teach  
7 there?

8 A. I taught corporate  
9 governance and corporate finance.

10 Q. And what did you do between  
11 1993 and 1998?

12 A. So between 1993 and 1998 I  
13 taught at Cornell law school. I was a  
14 professor at -- at Cornell law school,  
15 it's reflected in my resumé on the fourth  
16 item from the top. I was the J. DuPratt  
17 White Professor of Law at Cornell law  
18 school.

19 Q. And what did you teach  
20 there?

21 A. Same constellation of  
22 courses I taught: Business  
23 organizations, securities regulation,  
24 financial institutions, corporate

1 governance seminars, seminars on  
2 corporate governance and control. I  
3 taught -- as a service to the school I  
4 taught a course on family law. I think I  
5 taught bankruptcy one year.

6 Q. And when you were a visiting  
7 professor at Harvard law school from 1998  
8 to 1999, what did you teach there?

9 A. Securities regulation.

10 Q. Just that one course?

11 A. Yes.

12 Q. And when you were a visiting  
13 professor at Yale, from 2003 to 2004,  
14 what did you teach there?

15 A. I taught the basic course in  
16 business organizations and banking  
17 financial institutions, banking and  
18 financial institutions. That's one  
19 course, banking and financial  
20 institutions, that is.

21 Q. And you have been a Sam  
22 Harris Professor of corporate law,  
23 securities law, and corporate finance  
24 from 2004 forward, correct?

1 A. Yes.

2 Q. At Yale?

3 A. Yes.

4 Q. Do you teach any -- have you  
5 taught any other classes at Yale other  
6 than those reflected here?

7 A. So I've taught -- I've  
8 taught seminars on corporate governance.  
9 I teach a course in ethics in financial  
10 markets. I've taught a course regularly  
11 on what's kind of a -- what's known as an  
12 experiential or clinical offering related  
13 to writing comment letters to the SEC or  
14 amicus briefs in various issues of  
15 importance from public policy point of  
16 view that students will -- will  
17 participate and draft comment letters or  
18 amicus briefs on issues of relevance in  
19 corporate governance or finance pending  
20 before courts or administrative agencies.

21 Q. And what did you teach in  
22 Milan?

23 A. I taught corporate  
24 governance and corporate finance at

1 Bocconi in Milan. This was while I was  
2 on leave -- sabbatical leave from Yale in  
3 2012.

4 Q. And the current activities  
5 listed here, is this a complete list of  
6 all of your current activities?

7 A. I don't know. Let me review  
8 it.

9 I guess I would say, for  
10 completeness, it would be -- one -- I  
11 would -- I would say that one should look  
12 at my current activities on Pages 24 and  
13 25 of my resumé, but also look at my  
14 current positions, which is on the front  
15 page of the resumé. So there are certain  
16 positions that I have that are listed  
17 there that involve activities on my part.

18 I believe that the current  
19 activities list are essentially  
20 activities that are outside of Yale, and  
21 the current positions are either  
22 administrative positions related to my  
23 teaching or -- or involve some I guess  
24 more -- a little more allocation of time

1 on my part.

2 Q. What's the nature of your  
3 responsibilities as the Yale -- chair of  
4 the Yale faculty committee on athletics?

5 A. The Yale faculty committee  
6 on athletics is a faculty committee at  
7 Yale which advises the president of the  
8 university on issues related to oversight  
9 and governance of the department of  
10 athletics, the student athlete  
11 experience, and the sort of time-life  
12 balance involved in playing sports at the  
13 Division I level and being a student  
14 athlete at an Ivy League school.

15 Q. How long have you been in  
16 that position?

17 A. Several years, I don't  
18 recall exactly. But three or four I  
19 think.

20 Q. And have you had to deal  
21 with issues related to the college  
22 admissions scandal for athletes?

23 A. I've had no -- to deal with  
24 no issues with the college admissions

1 scandal which -- that I don't -- that I  
2 believe would be covered by the  
3 attorney/client privilege.

4 Q. I see. So do you act in  
5 that capacity as legal counsel to Yale?

6 A. No, I do not act -- I do not  
7 serve as legal counsel to Yale, no. Yale  
8 has an office of general counsel who  
9 serves as counsel and represents Yale  
10 in -- or in -- in -- in legal and  
11 regulatory matters.

12 Q. And so your dealings with  
13 respect to that issue are based solely on  
14 advice that you've received from Yale's  
15 counsel?

16 A. Well, not -- I've simply  
17 been at meetings where the issue you  
18 raise has been discussed. And there have  
19 been -- at all of those meetings present  
20 member -- legal counsel, outside legal  
21 counsel, and I've been advised that those  
22 meetings are covered by the  
23 attorney/client privilege.

24 Q. Were you involved in any of

1 Yale's public releases on that issue?

2 A. No.

3 Q. By that I mean press  
4 releases.

5 A. I know exactly what you  
6 mean, yeah.

7 Q. Okay. What is the nature of  
8 your responsibilities as the -- as a  
9 member of the executive committee on Yale  
10 Law School Center For the Study of  
11 Corporate Law?

12 A. We're involved in a variety  
13 of activities, planning programs,  
14 continuing legal education for alumni.  
15 We have some prizes and fellowship awards  
16 that are distributed, and generally  
17 providing support for that aspect of Yale  
18 Law School experience which relates to  
19 the study of corporate law and -- and  
20 corporate governance.

21 Q. What's the nature of your  
22 responsibilities as a member of the  
23 economics advisory board for the  
24 Financial Industry Regulatory Authority,

1 FINRA?

2 A. So FINRA, Financial Industry  
3 Regulatory Authority, is the  
4 self-regulatory authority that governs  
5 capital markets and broker-dealer firms.  
6 It operates under the kind of regulatory  
7 aegis of the Securities & Exchange  
8 Commission.

9 And this is a group of  
10 people who -- economists who provide  
11 economic analysis of regulatory issues  
12 that FINRA is dealing with and provides  
13 advice to FINRA executives and management  
14 about what enforcement issues they might  
15 think about and how the literature in  
16 finance, the economics and finance  
17 literature, might inform their  
18 enforcement process or regulatory --  
19 their rulemaking promulgation.

20 Q. And so your involvement  
21 entails providing that sort of economic  
22 analysis?

23 A. That is correct.

24 Q. And what is the nature of



1 your responsibilities as a member of the  
2 European corporate governance institute?

3 A. So that is an honorary group  
4 of people who are considered to be  
5 academic leaders in the field of  
6 corporate governance. And it involves  
7 attending conferences, presenting papers,  
8 evaluating papers submitted to  
9 conferences and generally participating  
10 in the intellectual life of the institute  
11 which studies corporate governance.

12 Q. What percentage of your time  
13 is devoted to teaching at this point?

14 A. Well, we're on summer  
15 vacation now, so zero.

16 Q. On an annual basis.

17 A. On an annual basis I teach  
18 generally three classes a year. I'm in  
19 the classroom for a total of 26 weeks.  
20 But on each week, I will meet classes  
21 maybe once or twice a week.

22 Q. Three classes. Are those  
23 three classes for the full year?

24 A. Yes. Two classes in one

1 semester generally, and one class in the  
2 other semester.

3 Q. What percentage of your time  
4 is spent working as an expert?

5 A. Well, tracking my previous  
6 answer, I would say today about  
7 90 percent. But usually about a quarter  
8 to a third.

9 Q. What percentage of your  
10 overall income is derived from serving as  
11 an expert?

12 A. Approximately 40 or 50, I  
13 would say.

14 Q. And that's true for this  
15 year?

16 A. 2019?

17 Q. Yes.

18 A. I believe so. So my income  
19 on an annual basis is derived from kind  
20 of three sources: Payments for -- salary  
21 payments, payments -- second bucket would  
22 be payments for lectures and royalties on  
23 published books, and the third category  
24 would be what you asked about, which

1     would be consulting. So I don't know. I  
2     haven't -- you know, I tabulated for tax  
3     purposes in April. I couldn't really  
4     estimate what it is for 2019. But it is  
5     not -- I do not anticipate that it will  
6     be materially different for 2019 than it  
7     has been for previous years.

8             Q.     And for how many years has  
9     it been at the 40 or 50 percent level?

10            A.     I don't -- maybe ten.

11            Q.     And what percentage of your  
12     time spent is devoted to working as an  
13     expert?

14            A.     Maybe 20 percent.

15            Q.     And that's true for the last  
16     ten years or so?

17            A.     That would be at most, some  
18     years it's probably less, over the last  
19     ten years. But on average, maybe  
20     something close to 20, I would guess.

21            Q.     Do you have a different  
22     résumé for non expert work?

23            A.     No. This is the only résumé  
24     that I have. I think that I may delete

1 the -- from -- sometimes the consulting  
2 rate, which appears on Page 26 of this  
3 resumé, but that would be the only change  
4 that I would make if I would distribute  
5 the resumé, say, in connection with an  
6 academic presentation or something of  
7 that sort.

8 Q. Would you agree to provide  
9 us with a copy of this resumé to the  
10 extent that it changes before trial?

11 MS. LEVY: Object to form.  
12 The -- we -- we'll do what the  
13 court orders us to do on that.

14 MS. BAIG: So you will not  
15 agree to provide us with any  
16 updates made to his resumé before  
17 trial?

18 MS. LEVY: I instruct you  
19 not to answer that. That's a  
20 matter for --

21 MS. BAIG: I'm asking you,  
22 Counsel.

23 MS. LEVY: That's a matter  
24 for counsel. I instruct you not

1 to answer.

2 MS. BAIG: So my question is  
3 to you, Counsel. Would you agree  
4 to provide us with any updates to  
5 this resumé to the extent there  
6 are any made prior to trial?

7 MS. LEVY: You don't have to  
8 answer that. That's a --

9 MS. BAIG: I'm not asking  
10 him. I'm asking you.

11 MS. LEVY: I -- I'm -- I'm  
12 not speaking to you. I'm speaking  
13 to the witness.

14 You do not have to answer  
15 that question.

16 MS. BAIG: Are you refusing  
17 to answer?

18 I'm asking you, Jennifer.

19 MS. LEVY: You ask him if  
20 he's refusing to answer, and he  
21 will -- he can answer that  
22 question for you.

23 MS. BAIG: So you won't talk  
24 with me about that at all --

1 MS. LEVY: Yeah, I'm telling  
2 you that we -- that counsel have  
3 mutually reciprocal agreements  
4 about what with respect to the  
5 experts will be produced when  
6 before trial. Whatever we agree  
7 to do, our side will do, as long  
8 as it's mutual.

9 And the -- what -- the  
10 witness does not know about that,  
11 nor does he need to.

12 MS. BAIG: So you will not  
13 agree at this point in time to  
14 provide us with any updates made  
15 to that resumé --

16 MS. LEVY: Here's what we  
17 will agree to --

18 MS. BAIG: -- between now  
19 and trial; is that right?

20 MS. LEVY: We will agree to  
21 whatever the parties mutually  
22 agree to do that the court orders  
23 us to do.

24 BY MS. BAIG:

1 Q. Where have you been licensed  
2 as an attorney?

3 A. Georgia.

4 Q. Anywhere else?

5 A. No.

6 Q. Are you currently licensed  
7 in Georgia?

8 A. Yes.

9 Q. Have you practiced law in  
10 Georgia?

11 A. No.

12 Q. How many books have you  
13 written roughly, your best estimate?

14 A. I would -- I would -- so  
15 I've written eight, about eight books. I  
16 have been an editor of a couple books  
17 where I served as editor, where  
18 substantial portions of the book have  
19 been written by others and -- and as  
20 contributing authors.

21 And then I've written with  
22 co-authors to case books where a  
23 significant percentage of the material --  
24 material in the book came in the form of

1 published opinions by judges, which I  
2 certainly would not claim authorship to,  
3 but -- but I would be -- would have been  
4 in charge of editing and compiling those  
5 cases and materials, and writing notes  
6 and comments and questions for students  
7 related to that material, and I'm listed  
8 as the author. But I don't know that I  
9 would -- I would count myself as being an  
10 author of those case books in quite the  
11 same way as say, a book that I had  
12 written cover to cover myself.

13 Q. And these are the -- the  
14 books listed here on Page 2, correct?

15 A. So the first two listed on  
16 Page 2 under the heading "Books" are case  
17 books that fit the description of  
18 containing a substantial portion of  
19 published written opinions by judges, and  
20 then the others are books that I've  
21 either written, co -- co-authored or  
22 served as editor on, and those are --  
23 the -- those are -- are specified as such  
24 on the resumé.



1 Q. And which of these, if any,  
2 deal with piercing the corporate veil?

3 A. So in terms of the books,  
4 the book, "Cases and Materials on  
5 Corporations Including Partnerships and  
6 Limited Liability Companies," contains  
7 material on piercing the corporate veil.

8 Similarly, the --  
9 the two-volume treatise updated manually,  
10 "Macey on Corporation Law," contains  
11 information on piercing the corporate  
12 veil.

13 I don't recall right now  
14 whether there are chapters in the "Iconic  
15 Cases in Corporate Law" book published in  
16 2008 dealing with piercing the corporate  
17 veil. I don't think so, but it might.

18 But those are the --

19 Q. Sorry. What was the third  
20 one you mentioned?

21 A. So the "Iconic Cases in  
22 Corporate Law."

23 Q. Got it.

24 A. That's the one I don't

1 recall if there are chapters in --  
2 related to piercing.

3 Q. And which of the articles  
4 that you've written specifically address  
5 piercing the corporate veil to your  
6 knowledge?

7 A. The primary article that  
8 I've written that addresses piercing the  
9 corporate veil is the article entitled  
10 "Finding Order in the Morass: The Three  
11 Real Justification For Piercing the  
12 Corporate Veil" which was published at  
13 100 Cornell Law Review in 2014.

14 Q. Any others?

15 A. I have -- I likely have  
16 touched on the issue of piercing the  
17 corporate veil in other articles such as  
18 the article on Citizens United with  
19 Justice Strine that we talked about  
20 earlier. But that's the only article  
21 that I can recall sitting here right now  
22 that deals exclusively with piercing the  
23 corporate veil.

24 Q. Or deals significantly?

1           A.       That's right.

2           Q.       What are the primary subject  
3 areas of the -- of the other books that  
4 you've written?

5           A.       So -- with -- unless you  
6 would prefer that I do it a different  
7 way, I'll simply start at the top of the  
8 list on Page 2 and work my way down, if  
9 that's acceptable to you.

10          Q.       Sure. I don't need  
11 everything that the book covers, but  
12 just --

13          A.       Okay.

14          Q.       -- you know, primarily what  
15 it's about.

16          A.       So, "Cases and Materials on  
17 Corporations Including Partnerships and  
18 Limited Liability Companies, in addition  
19 to dealing with piercing the corporate  
20 veil, which we've discussed, deals with  
21 agency principles. It deals with the  
22 differences between various forms of  
23 business organizations, including  
24 partnerships, corporations, limited

1 liability companies, Subchapter S  
2 corporations, and the like.

3 It also deals with issues  
4 related to how the corporation -- how --  
5 how to form a corporation or other kind  
6 of limited liability entity and how such  
7 entities are -- are governed and what the  
8 controlling principles are with respect  
9 to regulating the activities of officers  
10 and directors and other key  
11 decisionmakers in various forms of  
12 business organizations.

13 It also deals with certain  
14 selected issues in security -- federal  
15 securities regulation and state  
16 securities regulation, such as the  
17 process of going public and the rules of  
18 insider trading.

19 The second book, "The Law of  
20 Banking and Financial Institutions" deals  
21 with the structure of the financial  
22 industry, the basic regulations that deal  
23 with commercial banking, including the  
24 Bank Holding Company Act and the

1     Gramm-Leach-Bliley Act and the Dodd-Frank  
2     Act.

3                     It deals with regulations of  
4     insurance companies, regulations of  
5     mutual funds, also known as investment  
6     companies, regulation of certain other  
7     forms of business organizations or that  
8     are involved in the financial industry,  
9     such as hedge funds and private equity  
10    firms.

11                    It deals with the issue of  
12    so-called structured finance. Things  
13    like residential mortgage-backed  
14    securities and collateralized debt  
15    obligations.

16                    "Macey on Corporation Law"  
17    is a treatise that deals with various  
18    subjects in corporate law. Generally the  
19    same subjects I described before as being  
20    dealt with in the cases and material on  
21    corporate law, but -- but more focused  
22    narrowly on corporations and away from  
23    partnerships and LLCs.

24                    "The Death of Corporate

1 Reputation: How Integrity Has Been  
2 Destroyed on Wall Street," is a book  
3 about the economic theory of -- of --  
4 excuse me. The economic theory of  
5 reputation of Wall Street firms,  
6 including investment banks and law firms  
7 and private equity firms and hedge funds,  
8 and why that kind of standard economic  
9 theory account of corporate reputation no  
10 longer provides a very accurate  
11 explanatory framework for understanding  
12 the economics and incentives that these  
13 Wall Street actors operate under.

14 "Corporate Governance:  
15 Promises Kept, Promises Broken" is a book  
16 about what corporate governance is and  
17 what kinds of mechanisms and institutions  
18 of corporate governance are most  
19 effective in controlling aberrant or  
20 inappropriate behavior by officers and  
21 directors, particularly activities that  
22 divert wealth from investors to the sort  
23 of pockets of the officers and directors  
24 who are charged with running the firm.

1 "Classics in Corporate Law  
2 and Economics" deals with -- is a book  
3 that I edited in which various other  
4 colleagues in academia contributed  
5 articles in which they discuss classic  
6 articles in corporate law and economics,  
7 famous articles; iconic cases in  
8 corporate law, a series of articles by  
9 academics, myself and others, on the most  
10 famous, what are known -- we call in the  
11 title iconic cases in corporate law.

12 The Costly Policies book,  
13 "Costly Policies: State regulation and  
14 the Antitrust Exemption in Insurance  
15 Markets" is about the McCarran-Ferguson  
16 Act and the policy implications  
17 associated with the allocation of  
18 regulatory authority over insurance  
19 company -- companies, which in the United  
20 States is focused -- focuses regulatory  
21 authority on state regulators as distinct  
22 from federal regulators, such as the  
23 comptroller of the currency or the  
24 Securities & Exchange Commission.

1                   A book -- the book  
2       "Corporate Law in Transition: A Law and  
3       Economics Analysis" deals with issues of  
4       corporate governance, what corporate law  
5       is and the relationship between corporate  
6       law and microeconomic theory.

7                   The Third-Party Legal  
8       Opinions book deals with the provision by  
9       law firms of third-party legal opinions  
10      in corporate law transactions and what  
11      their responsibilities are when issuing  
12      legal opinions, essentially, to  
13      non-clients.

14                  The book "Insider Trading,  
15      Economics, Politics and Policy" deals  
16      with the economic basis for regulating  
17      the trading of -- in securities by  
18      parties that have material non-public  
19      information about the companies whose  
20      financial assets are being traded.

21                  "An Introduction to Modern  
22      Financial Theory" is a book about basic  
23      principles of corporate finance, such as  
24      the capital asset pricing model or the



1 efficient capital markets hypothesis or  
2 portfolio theory or the nature of the --  
3 what in financial economics is known as  
4 the beta coefficient. It explains  
5 economic and finance concepts to -- in a  
6 nontechnical way designed to provide  
7 information to lawyers who are working  
8 with investment bankers who are working  
9 in finance, where in order to provide  
10 more effective counsel that's useful for  
11 the lawyers to understand certain  
12 financial theories.

13 Q. Thank you. Now, when you  
14 were -- I believe you testified that you  
15 were first retained in this case in late  
16 2018 or early 2019.

17 During that initial contact,  
18 what were you asked to do in this case?

19 A. I don't recall the exact  
20 words of the conversation. My  
21 recollection is that I was told that  
22 there was litigation brought against  
23 certain corporate entities and that I was  
24 being retained to look at the corporate

1 governance relationship between and among  
2 the various corporate entities that had  
3 been named as defendants in this  
4 litigation and to, in particular, look at  
5 the corporate control and governance  
6 implications associated with certain  
7 sales of shares and assets that had  
8 occurred in the past.

9 Q. And did that ask evolve over  
10 time at all?

11 A. I would say that they -- I  
12 don't think they evolved very much, no.  
13 I think that essentially the scope of my  
14 work and the nature of my retention  
15 essentially has stayed the same.

16 Q. And did you understand the  
17 reason for -- for the retention? Or what  
18 was your understanding of a reason for  
19 the retention?

20 A. I -- you're asking me why do  
21 I think that the lawyers at Kirkland  
22 Ellis retained me?

23 Q. Mm-hmm.

24 A. I don't know. You have to

1 ask them. I don't -- I don't know.

2 Q. And did you review any  
3 materials in preparation for your  
4 deposition today other than your expert  
5 report?

6 A. Yes.

7 Q. What did you review?

8 A. I re -- I looked at some  
9 organizational charts that I had  
10 previously looked at, but in preparation  
11 for my deposition, I looked at them  
12 again.

13 I looked at a litigation  
14 settlement document. No, I think I  
15 looked at that earlier. Never mind. No,  
16 that wasn't anything new.

17 Mainly I re-read my -- I  
18 re-read my expert report. I looked at  
19 the -- and I looked at the organizational  
20 charts.

21 Q. You have a list in your  
22 expert report of the materials that were  
23 reviewed or relied upon in connection  
24 with the report.

1 Do you recall that?

2 A. Yes.

3 Q. I believe it's on Page 4 of  
4 Exhibit 3.

5 A. I believe that -- I may have  
6 misunderstood your question. I  
7 apologize. I believe -- I apologize, but  
8 I believe all of Exhibit 3, including the  
9 first few pages, contains documents that  
10 I reviewed in connection with this  
11 retention.

12 Q. Okay. And were the org  
13 charts that you looked at in preparation  
14 for this deposition, are they itemized  
15 here on Exhibit 3?

16 A. Yes.

17 Q. Where?

18 A. They -- those documents  
19 would be in the production documents  
20 listed in Roman Numeral III.

21 Q. So on Page -- beginning on  
22 Page 4?

23 A. Beginning on Page 4,  
24 correct.

1 Q. So you didn't look at any  
2 new organizational charts apart from the  
3 ones that you had looked at in connection  
4 with your report; is that right?

5 A. I only looked at -- so the  
6 set of organizational charts cited here,  
7 they were certainly new to me when I was  
8 retained in this matter. The ones that I  
9 looked at in preparation for this  
10 deposition were no different than that  
11 ones -- they weren't different -- they  
12 were the same ones that I looked at in  
13 connection with my preparation of the  
14 original report.

15 Sorry if I was unclear about  
16 that.

17 Q. Understood. And so the  
18 litigation settlement document that you  
19 looked at, what document was that?

20 A. I had looked, in connection  
21 with my preparation of the original  
22 report, some -- there was appendix, I  
23 believe, to an annual report that I  
24 looked at, one of the ones cited in Roman

1 Numeral II. There was an appendix that  
2 talked about some litigation between Teva  
3 and Allergan, as I recall.

4 Q. So is this Exhibit 3 a  
5 complete list of all materials reviewed  
6 and/or relied upon in connection with  
7 your report and your testimony today?

8 A. Yes, it is.

9 Q. I would ask that to the  
10 extent that you review additional  
11 materials in connection with any sort of  
12 rebuttal report or testimony at trial,  
13 that we be provided with a copy of those  
14 materials or at least a list of those  
15 materials.

16 MS. BAIG: Would you agree  
17 with that, Counsel?

18 MS. LEVY: To the extent  
19 that there are such materials,  
20 we'll address them as they arise.

21 MS. BAIG: You'll advise us  
22 if there are additional materials?

23 MS. LEVY: We'll see as we  
24 go. It all depends on what

1           agreements are struck between your  
2           side and our side going forward.  
3           We will comply with the court's  
4           rules and procedures.

5                   MS. BAIG: But you won't  
6           agree, as you sit here right now,  
7           to provide us with any updated  
8           materials; is that right?

9                   MS. LEVY: We will agree to  
10          apply -- to abide by all  
11          applicable rules and procedures  
12          and mutual agreements that we  
13          reach. I won't agree to anything  
14          sitting here because I don't -- I  
15          don't know what's going to happen  
16          in the future.

17       BY MS. BAIG:

18                  Q.       Have you created any  
19          demonstratives to sort of explain any of  
20          the opinions in your expert report?

21                  A.       There are certain charts  
22          that I prepared. But those are all in  
23          the report, they're part and parcel of  
24          the report. So there's a chart, for

1 example, on Page 35 or Page 33. I don't  
2 know if you would call these  
3 demonstratives. But to the extent that  
4 they are, I prepared them. And -- but  
5 they are included in my report. There  
6 are no demonstratives or other material  
7 that I prepared that's not in my report.

8 Q. Do you intend to prepare any  
9 demonstratives in preparation for your  
10 testimony at trial, if you do testify at  
11 trial?

12 A. I have no current intention.  
13 I have prepared demonstratives in the  
14 past in connection with testimony that I  
15 have made. I certainly would not rule it  
16 out. But I have no present intention to  
17 create any demonstratives.

18 Q. Did any of the  
19 demonstratives that you've prepared in  
20 the past -- in the past deal with  
21 piercing the corporate veil?

22 A. I don't remember.

23 Q. So you have no additional  
24 opinions about -- about this case, apart



1 from those that are set forth in this  
2 expert report; is that correct?

3 A. There -- I have no opinions  
4 that I'm intending to offer as an expert  
5 that are not reflected in this report,  
6 no.

7 Q. So you have some opinions,  
8 but not ones that you're going to offer  
9 at trial or in a rebuttal report, is that  
10 what you're saying?

11 A. Yeah, I mean, I think like  
12 most people, I have a lot of opinions  
13 about a lot of things, the vast majority  
14 of which are probably irrelevant to this  
15 litigation.

16 But -- but these -- I  
17 believe that this report contains a  
18 complete list of -- of -- of my -- subset  
19 of my opinions in the world that relate  
20 to matters upon which I'll testify as an  
21 expert witness in this case or that I  
22 expect to sitting here right now.

23 I would -- I would imagine a  
24 possibility that plaintiffs in the case

1     could produce a report related to  
2     corporate governance and corporate  
3     control issues, and I could imagine that  
4     I would, you know, prepare -- formulate  
5     opinions based on that, but I've not seen  
6     any such report and I don't have any such  
7     opinions related to that sitting here  
8     right now.

9             Q.     And the summary of your  
10    opinions is -- begins on Page 11,  
11    correct?

12            A.     Yes.

13            Q.     And there's seven of them,  
14    correct?

15            A.     Yes.

16            Q.     And do you have any  
17    additional bases for any of these  
18    opinions that are not set forth here in  
19    this report?

20            A.     None that I can think of  
21    sitting here right now.

22            Q.     Do you have a file of all of  
23    the materials reviewed in connection with  
24    your creating this report?

1           A.       I have materials both in  
2       hardcopy and electronic form. The  
3       materials in hardcopy are in kind of  
4       notebooks. The materials in electronic  
5       form are -- are in -- are in electronic  
6       files.

7           Q.       And those are all identified  
8       in Exhibit 3, correct?

9           A.       I'm not quite sure. All of  
10      the materials, yes, are identified in --  
11      in Exhibit 3. Sometimes the name of the  
12      files on my computer will be, if I  
13      receive a document on May 28th, I'll call  
14      the file that contains that document, May  
15      28, 2019.

16                   That -- the actual document  
17      is listed on this report, but the name  
18      that I use, that date I don't think is on  
19      this list. But that would not represent  
20      a document that I reviewed.

21                   The -- all of the material  
22      that I reviewed is referenced in this  
23      exhibit.

24           Q.       And how did you come to

1 review the produced documents, the  
2 production documents that are set forth  
3 on Pages 4, 5 and 6 of Exhibit 3 of your  
4 report?

5 How did you find those  
6 documents? Were those provided to you by  
7 counsel?

8 A. I would -- most of these  
9 were provided to me by counsel. Some of  
10 them I found on my own, like for -- just  
11 to pick -- so for example, all -- I think  
12 all of the production documents were  
13 provided to me by counsel.

14 These cases that are cited  
15 on Page 4 or, you know, items that are  
16 listed in this --

17 Q. No, I'm just talking about  
18 the production documents.

19 A. Oh, I'm sorry, yes.  
20 Correct. I would be -- all of the  
21 production documents in Roman Numeral III  
22 were provided to me by counsel.

23 Q. So these are the only  
24 documents produced by the Allergan

1 entities in this case that you have  
2 reviewed; is that right?

3 A. Well, I'm not sure about  
4 that. Because if you look at -- if you  
5 look at Roman Numeral I, there are other  
6 documents such as County of Cuyahoga,  
7 Ohio, against Purdue Pharma LP.

8 I -- sitting here right now,  
9 I -- that document may have been provided  
10 to me by counsel. I may have found it  
11 doing a web search. I don't recall,  
12 but --

13 Q. Wait, wait, you are talking  
14 about the complaint?

15 A. Oh no, sorry. No, no, no,  
16 I'm not. I beg your pardon.

17 I'm talking about, in item  
18 Roman Numeral I-B, these memorandum  
19 opinions --

20 Q. Wait, I'm not talking about  
21 opinions or caselaw.

22 A. Okay.

23 Q. I'm just talking about  
24 documents that have been produced in the

1 MDL litigation.

2 A. Oh, I'm sorry, I thought a  
3 case -- I thought -- I call them all  
4 documents. I beg your pardon --

5 Q. Documents produced. So you  
6 have here production documents, do you  
7 see that, under Section 3?

8 A. Yes.

9 Q. And there's a number of  
10 documents that have Bates ranges?

11 A. Yes.

12 Q. And those Bates -- Bates  
13 ranges, Bates numbers, indicate that  
14 those documents have been produced in  
15 this MDL litigation.

16 A. Okay.

17 Q. By -- by Allergan or an  
18 Allergan entity.

19 A. Okay.

20 Q. Do you see that -- except  
21 for one that has a Teva Bate -- Teva  
22 Bates stamp. Do you see that, at the  
23 very -- one or two at the very end?

24 A. I do see that, yes. I was

1     unaware. I mean, I knew that -- I  
2     thought the Bates numbers were done to  
3     identify the documents. I didn't realize  
4     they identified who produced them. I  
5     didn't know that, thank you.

6             Q.     Okay. So these documents  
7     are all of the documents that have been  
8     produced in this action as -- as evidence  
9     that you have reviewed; is that right?

10            A.     Yes.

11            Q.     There are no additional  
12     evidentiary documents produced in this  
13     action that you have reviewed that form  
14     the basis of any of the opinions in your  
15     report; is that right?

16            A.     Yes.

17            Q.     And did you have access to a  
18     database or otherwise to all of the  
19     documents that were produced by Allergan  
20     in this case?

21            A.     I -- there were no documents  
22     that I asked for that were not provided  
23     to -- to me. I don't know that I -- I  
24     think I asked for documents and the

1 documents were provided to me. I don't  
2 think that -- I don't think I had access  
3 to the global database of -- of all of  
4 the documents that had been produced.

5 Q. You didn't run any searches  
6 yourself in a larger database; is that  
7 right?

8 A. I ran various searches to  
9 produce -- but not with respect to the  
10 production documents. I did no searches  
11 of the production documents, that's  
12 correct.

13 Q. Okay. What documents did  
14 you ask counsel to provide to you, what  
15 categories of documents did you ask for?

16 A. Well, I asked for  
17 organizational charts. I asked for  
18 documents that provided information about  
19 the nature of the corporate entities  
20 involved in this case, documents related  
21 to the structure and organization of  
22 the -- of the defendants that were --  
23 were -- that I was asked to -- the  
24 particular defendants that I was asked



1 to -- to evaluate, which specifically are  
2 the ones that are listed in Paragraph 7  
3 and 8 and 9 of my report. I asked for  
4 documents related to those entities.

5 Q. Documents related to the  
6 structure and organization of those  
7 entities?

8 A. Correct.

9 Q. Okay. So apart from org  
10 charts, documents showing information  
11 about the nature of corporate entities,  
12 and documents showing the structure and  
13 organization of the entities that you  
14 just identified, what additional  
15 categories of documents, if any, did you  
16 ask for?

17 A. So situations in which  
18 these -- instances in which these  
19 entities had been involved in disputes  
20 with one another or had been involved in  
21 certain in -- litigation with third  
22 parties. Formational documents.

23 Q. Any other --

24 (Brief telephonic

1                   interruption.)

2       BY MS. BAIG:

3                   Q.       Any other categories of  
4       documents that you asked for?

5                   A.       So I'd made a general  
6       request for documents that were relevant  
7       to understanding the corporate governance  
8       relationship among these firms and the  
9       corporate governance structure of these  
10      firms. So annual reports would be  
11      included within that list for example.

12                  Q.       Anything else that you can  
13      think of?

14                  A.       Not offhand, no.

15                  Q.       Did you review any  
16      deposition testimony in connection with  
17      your preparation of your report?

18                  A.       Yes.

19                  Q.       What testimony did you  
20      review?

21                  A.       Well, I specifically recall  
22      reviewing -- reading the deposition  
23      testimony of a Mr. Kaufhold who was a  
24      treasurer of certain Allergan entities,

1 including Allergan PLC. I may have  
2 reviewed other deposition testimony. But  
3 sitting here right now I don't recall it  
4 offhand.

5 Q. Would that be listed in  
6 here?

7 A. Yes.

8 Q. Where is that listed?

9 A. It's listed under Roman  
10 Numeral I-D.

11 Q. So you just have Kaufhold  
12 listed there, correct?

13 A. Correct. And the exhibit --  
14 there were substantial exhibits to  
15 Kaufhold, which I also reviewed.

16 Q. Okay. But did -- so is it  
17 your testimony that you did not review  
18 any other deposition testimony other than  
19 Stephen Kaufhold?

20 A. That's correct. I don't  
21 recall reviewing any other deposition  
22 testimony.

23 Q. And if you had, you would  
24 have included it in this report; is that

1 correct?

2 A. It would certainly be my  
3 intention, yes, that's correct.

4 Q. And it's not your  
5 understanding as you sit here right now  
6 that there's an error in the report as  
7 far as --

8 A. That's correct. I'm not  
9 aware of any such error.

10 Q. Okay. Did you review the  
11 entire deposition transcript of Steven  
12 Kaufhold or sections of it?

13 A. The entire deposition  
14 transcript. I reviewed the entire  
15 deposition transcript.

16 Q. And you did not review any  
17 additional depositions since the creation  
18 of this report?

19 A. I don't believe I did. I  
20 believe if I had reviewed any  
21 depositions, I would have included them  
22 on this list. I don't see any included  
23 and I do not recall having reviewed any  
24 other depositions.

1 Q. Since this -- since this --

2 A. Since this, correct. Sorry.  
3 Yeah. Got it. No, I haven't reviewed  
4 any since this.

5 Q. Okay. Did you ask to review  
6 any additional documents that you were  
7 not provided with?

8 A. No, not that I recall.

9 Q. Did you ask to review any  
10 additional testimony that you were not  
11 provided with?

12 A. No.

13 Q. Did you ask to review the  
14 Kaufhold deposition transcript or was  
15 that offered to you by counsel?

16 A. I believe it was offered to  
17 me. I was unaware of Mr. Kaufhold's  
18 existence prior to my retention in this  
19 matter. My recollection is I asked for  
20 documents that would be relevant to my  
21 analysis in any way, shape, or form. And  
22 they -- that was provided to me.

23 Q. And you had not reviewed any  
24 transcripts of any other defendants; is

1       that right? Including Teva?

2               A.       That is correct. That's --  
3       to the best of my recollection, and I  
4       believe I would remember it. I had not  
5       reviewed any other deposition testimony,  
6       including Teva.

7               Q.       For the documents that are  
8       identified as production documents in  
9       Section Roman Numeral III, were those  
10      documents provided to you in hardcopy or  
11      electronically?

12              A.       Some were provided, I  
13      believe, in -- I think they were all  
14      provided electronically. In addition, I  
15      believe some were also provided to me in  
16      hardcopy.

17              Q.       And why were some provided  
18      in hardcopy? Were those larger documents  
19      or was there some reason for those being  
20      provided in hardcopy?

21              A.       I don't believe I expressed  
22      a preference. I don't know. You'd have  
23      to -- that would be -- I believe -- I  
24      don't know. I think -- I think I may

1 have asked for a couple of documents in  
2 hardcopy. The organizational charts are,  
3 in my opinion, easier to read in  
4 hardcopy. And when I looked at those, I  
5 looked at them in hardcopy.

6 But I don't -- but beyond  
7 that, it was -- it didn't -- it was, you  
8 know, I -- there were no documents that  
9 were provided to me electronically that I  
10 couldn't print out if I wanted to, so it  
11 didn't really matter.

12 Q. And were the documents  
13 provided to you with attorney notes on  
14 them or highlighting or anything like  
15 that, or were they clean copies?

16 A. Clean copies.

17 THE WITNESS: Can I take a  
18 five-minute bathroom break?

19 MS. BAIG: Sure.

20 THE VIDEOGRAPHER: Off the  
21 record at 1:47 p.m.

22 (Short break.)

23 THE VIDEOGRAPHER: We are  
24 back on the record at 2:08 p.m.

1 BY MS. BAIG:

2 Q. All right. If you could  
3 turn your attention, please, to Page 11  
4 of your expert report.

5 A. Okay.

6 Q. You see there it begins to  
7 set forth the summary of your opinions.

8 Do you see that?

9 A. I do.

10 Q. And directing your attention  
11 to Opinion Number 1, which begins, "There  
12 are strong and long-standing economic and  
13 efficiency justifications for the  
14 principle of limited liability."

15 Do you see that?

16 A. Yes.

17 Q. And if you flip to Page 14,  
18 you have your support identified for  
19 Opinion Number 1.

20 Do you see that?

21 A. Yes.

22 Q. Is there any additional  
23 support for Opinion Number 1 that's not  
24 included in this report that you're aware



1 of?

2 A. Yes.

3 Q. And what is that?

4 A. Well, there are -- there's a  
5 vast literature on the economics and  
6 efficiency justifications for the  
7 principle of limited liability.

8 I did not cite every source  
9 that supports the concept that limited  
10 liability is economically efficient and  
11 a -- and a -- and a positive thing from a  
12 public policy perspective. There are  
13 just, you know, articles and -- in both  
14 law and economics literature and the  
15 finance literature on this topic. I  
16 didn't cite every single thing. I think  
17 there are probably hundreds if not  
18 thousands.

19 Q. And are there any documents  
20 produced in this case which are  
21 identified in Exhibit 3, Roman Numeral  
22 III, production documents, that you  
23 specifically used to support this  
24 opinion?

1           A.       Well, certainly, the law  
2       review article that is cited --

3           Q.       No, I'm looking at produced  
4       documents.

5           A.       I'm sorry. I don't --

6           Q.       Produced documents are just  
7       documents with?

8           A.       Oh, with the Bates  
9       numbers --

10          Q.       -- evidentiary documents  
11       with the Bates numbers that were produced  
12       in this case.

13          A.       Okay. Thanks. What was the  
14       question?

15          Q.       Is this opinion -- this  
16       opinion, it seems to me, is based  
17       primarily on your review of literature  
18       and not on the production of documents in  
19       this particular case. And I'm just  
20       asking you if that's -- if that  
21       understanding is correct.

22          A.       Yes and no. So I think  
23       the -- my Opinion Number 1 relates to the  
24       definition of limited liability, what the

1 term means, and what the economic and  
2 efficiency justifications are for the  
3 principle.

4 There are -- there are  
5 documents in -- the production documents  
6 that I cite that I believe to be  
7 consistent with that insight. Or to be  
8 more precise, that rely on that insight  
9 being correct. And, therefore,  
10 supportive of the insight.

11 But they're not directly  
12 supportive as much as sort of impliedly  
13 or implicitly supportive.

14 Q. What documents are those?

15 A. These would be the  
16 documents -- well, to begin with, the  
17 organizational chart, the documents that  
18 indicate that Allergan organized itself  
19 as an -- Allergan PLC and Allergan  
20 Finance LLC organized itself as a holding  
21 company.

22 The documents about the --  
23 the -- the -- well, for example, the  
24 master purchase agreement between the

1 Allergan entities and Teva, which I refer  
2 to in my expert report as the buyer.  
3 The -- those documents, specific  
4 provisions of those documents in my  
5 opinion reflect reliance on the  
6 principles described in Opinion 1.

7 Q. Anything else that you can  
8 think of?

9 A. No. Not at the moment.

10 Q. And there are no additional  
11 bases for this opinion that we have not  
12 already discussed; is that right?

13 A. Well, I think there are  
14 additional bases for this opinion that we  
15 haven't discussed, yes, actually.

16 Q. Such as?

17 A. Well, so there are other --  
18 there are, as I mentioned before, a vast  
19 number of -- there's a vast amount of  
20 support for the concept of limited  
21 liability. I gave what I regard to be an  
22 overview in Roman Numeral III.

23 There are -- there are  
24 additional bases of support, for example,

1 I'll -- that it would be in the absence  
2 of limited liability. So if investors  
3 were unlimitedly liable, it would be  
4 impossible to price financial assets such  
5 as equity securities with any accuracy  
6 because the value of any, for example,  
7 share of stock would not only be a  
8 function of the present value of the  
9 future income associated with an  
10 investment in those shares, it would also  
11 be a function of the expected liability  
12 of a shareholder, which in turn would be  
13 a function of the wealth of that  
14 shareholder.

15 So, in essence, that means  
16 that two shareholders who own identical  
17 stock in identical firms would have  
18 different valuations placed on those  
19 shares of stock depending on whether that  
20 shareholder was judgment proof or not.

21 So, essentially, the greater  
22 your assets are, the least interested or  
23 likely or -- you would be in making  
24 investments. That's one additional

1 argument for limited liability that I  
2 don't really -- that I don't really go  
3 into in this opinion.

4 Another argument in favor of  
5 limited liability is that if -- if there  
6 were unlimited liability, this would skew  
7 the value of financial assets in a very  
8 inefficient way in favor of holding debt  
9 as opposed to holding equity. Because  
10 the investors in debt instruments, and  
11 bonds, for example, or people who make  
12 loans, would not be generally responsible  
13 to other creditors the way that  
14 shareholders would be in a regime of  
15 limited liability.

16 So we would see a -- there's  
17 a lot of literature in finance that said  
18 if we didn't have limited liability, then  
19 we'd simply see a change in capital  
20 structure of businesses so they'd have a  
21 whole lot more debt than -- than equity.

22 In addition though --

23 Q. Isn't that the argument  
24 that's reflected in Paragraph 22?

1           A.       It is not inconsistent with  
2       that argument.   It's slightly different.

3                   Argument 22 -- the argument  
4       I just made is about capital structure.  
5       Argument 22 is not at all about capital  
6       structure.   It's a different -- different  
7       argument.

8                   I mean, they both have in  
9       common that they are supportive of the  
10      principle of limited liability.   But they  
11      are not the same argument.

12           Q.       Okay.   Any other argument --  
13      or bases for Opinion Number 1 that are  
14      not in this report?

15           A.       So something that's related  
16      to this, the -- my support for Opinion 1  
17      that I don't talk about specifically, but  
18      relates sort of to number --  
19      Paragraph 20, Number C, which relates to  
20      allowing investors to form, invest and  
21      manage in multiple businesses, is that if  
22      we didn't have limited liability, it  
23      would significantly compromise the  
24      economic advantages of portfolio

1 diversification.

2 That you wouldn't -- the  
3 notion of diversification is you  
4 shouldn't hold all of your eggs in one  
5 basket. It's a good idea to invest in a  
6 lot of different enterprises. But if  
7 you're -- if an investor is unlimitedly  
8 liable for every single equity investment  
9 that they make, then this -- this  
10 diversification strategy would no longer  
11 be rationale.

12 So that -- that is kind of  
13 implicit in Paragraph 20, Number C, but  
14 the specific point about portfolio theory  
15 and diversification isn't really made in  
16 this -- in these -- in Roman Numeral III.

17 Q. Any other bases of support  
18 for Opinion Number 1 that you did not  
19 include in your report?

20 A. I don't think so. I think  
21 that's all I can think of right now.

22 Q. Looking at Opinion Number 2,  
23 as set forth on Paragraph 12?

24 A. Okay.



1 Q. I'm sorry, on Page 12?

2 A. Got it. Yeah.

3 Q. And you find in that opinion  
4 that, "All such control was a necessary  
5 and inevitable consequence of the fact  
6 that the Allergan entities directly or  
7 indirectly owned 100 percent of the stock  
8 of the divested entities," correct?

9 A. Yes, correct.

10 Q. And beginning on Page 16,  
11 you set forth your support for Opinion  
12 Number 2.

13 Do you see that?

14 A. Yes.

15 Q. Are there any additional  
16 bases for your Opinion Number 2 that you  
17 did not set forth in your expert report?

18 A. Yes. So there -- there is  
19 more support for Opinion Number 2 than is  
20 contained in this discussion in -- oh no,  
21 I'm sorry, I beg your pardon. I was  
22 ending with Page 18.

23 I think the support for  
24 Opinion Number 2 continues -- okay. I

1     beg your pardon.

2                     So the -- what I was talking  
3     about is the support provided in  
4     Paragraph 33, which I think is also  
5     support for Opinion Number 2. It's  
6     just --

7             Q.     I think it continues to  
8     paragraph -- to Page 32, correct?

9             A.     Okay. Good. Okay. Thank  
10    you.

11                    No, I can't -- sitting here,  
12    I can't think of additional support for  
13    Opinion Number 2 that is not reflected in  
14    Roman Numeral IV, Pages 16 to 32 in my  
15    report.

16             Q.     Okay. And looking at  
17    Page 12, Opinion Number 3, that begins,  
18    "The Allergan entities and the divested  
19    entities were all substantial companies  
20    with their own corporate governance  
21    infrastructures."

22                    Do you see that?

23             A.     Yes, I do, thank you.

24             Q.     And that "they operated in a

1 manner that was separate and distinct  
2 from the operations of their parents  
3 companies and affiliates and had a  
4 significant amount of independence."

5 Do you see that?

6 A. Yes.

7 Q. And is there any support for  
8 this Opinion Number 3 that is not  
9 reflected under Roman Numeral V, support  
10 for Opinion Number 3 that begins at  
11 Page 32 of your report?

12 A. No, I think all of the  
13 opinion -- all of the support for that  
14 opinion, to the best of my knowledge  
15 sitting here right now, are -- are  
16 reflected in the report.

17 Q. And were there specific  
18 produced documents, evidentiary documents  
19 produced by the Allergan entities in this  
20 litigation that are supportive of this  
21 Opinion Number 3?

22 A. Yes.

23 Q. And what were those?

24 A. They are the documents that

1 are cited -- well, I'm sorry, you are  
2 drawing a distinction between documents  
3 reviewed and documents produced? I'm  
4 just not quite --

5 Q. I'm talking about the Bates  
6 stamped documents produced by Allergan.

7 A. Okay. Got it.

8 Q. The evidence that you  
9 reviewed in this case, evidence as  
10 opposed to legal opinions or articles.

11 A. Right. Right. Right.

12 It's a little confusing to  
13 me, because there are -- there are  
14 articles that were not produced -- there  
15 were documents not produced in this case  
16 that are not articles or -- or opinions.  
17 You know, there are things like exhibits  
18 to deposition testimony.

19 But -- but I guess, with  
20 respect to the --

21 Q. That's what I'm talking  
22 about.

23 A. Yeah. So I would say  
24 with -- I mean, I'm not really sure what

1     you're asking, but --

2             Q.     So if you look at Page 4 of  
3     Exhibit 3, there's category Roman Numeral  
4     III that says production documents, and  
5     there's a list of Bates stamped ranges.

6             A.     Right.

7             Q.     And those are the Allergan  
8     documents produced in the MDL litigation  
9     that you reviewed in -- in connection  
10    with your preparation of this report,  
11    correct?

12            A.     Correct.

13            Q.     And so my question to you  
14    is, what of those documents, what of  
15    those documents evident -- evidence  
16    produced in this case is supportive of  
17    your Opinion Number 3?

18            A.     And do you mean other than  
19    the ones that are cited in my report?

20            Q.     Well, which of those? There  
21    are -- what do you recall --

22            A.     I mean --

23            Q.     -- are the categories of  
24    documents that were --

1           A.       So this --

2           Q.       -- produced that would be  
3       supportive of Opinion Number 3; are they  
4       org charts --

5           A.       Yeah, I don't really -- I  
6       mean --

7           Q.       -- what types of documents?

8           A.       So this would be -- we can  
9       look at the documents.  
10       Allergan\_MDL\_03367292.  
11       Allergan\_MDL\_0336 --

12          Q.       What are you reading from?

13          A.       -- 7294.

14                 I'm -- I'm reading from the  
15       charts that I prepared that appear on  
16       Pages 39 and 40 of my expert report.

17          Q.       Got it. Okay. So there's  
18       the Bates stamped numbers that are cited  
19       in the report?

20          A.       Right.

21          Q.       Are there any other  
22       additional categories of -- of Allergan  
23       produced documents that you recall  
24       looking at that would support this

1 opinion, Number 3?

2 A. Categories of produced  
3 documents?

4 Q. Correct.

5 A. I don't know. I mean, it's  
6 impossible for me to answer your question  
7 counselor because in the context of  
8 preparing this report, I did not draw a  
9 distinction between the produced -- a  
10 document that was produced and,  
11 therefore, would be susceptible to  
12 answering your question, versus another  
13 document, like a -- the memorandum of  
14 opinion in this case, or the Allergan  
15 Form 10(k) or other materials that I  
16 considered that would be the, you know,  
17 the public offering document.

18 So we take for example the  
19 master purchase agreement. I can't --  
20 sitting here right now, I have -- I don't  
21 know whether this was one of the  
22 documents that you describe as a  
23 production document or not.

24 Q. It was actually produced.

1           A.       So I'm not able to answer  
2       your question.

3           Q.       The master purchase  
4       agreement was produced.

5           A.       Okay.

6           Q.       You know, I guess the  
7       distinction that I'm drawing is between  
8       literature and case opinions, which is  
9       different from Allergan-specific  
10      documents that have either been produced  
11      in this case or, you know, even the  
12      10(k)s, I don't recall whether they were  
13      produced or not --

14          A.       Well, start for example --

15          Q.       -- specific to Allergan?

16          A.       Well, the Stephen Kaufhold  
17      deposition, which is -- I have listed  
18      under Roman Numeral I-D. To me, that's  
19      an Allergan-specific document.

20          Q.       Correct.

21          A.       But I don't know. Is it  
22      a -- but it doesn't -- it's not on the  
23      production document list.

24          Q.       Well, you have identified it



1 as -- and the exhibits to the Kaufhold  
2 deposition would have been produced by  
3 Allergan. But is that something --

4 A. I thought you didn't want me  
5 to talk about any documents other than  
6 Roman Numeral III. That's why I'm  
7 confused. This Kaufhold deposition is in  
8 Roman Numeral I.

9 Q. Okay. So Kaufhold is the  
10 one -- is the one sort of exception  
11 because he's a -- he's the one witness  
12 whose testimony you reviewed and his  
13 exhibits you reviewed. But apart from  
14 that, I would imagine everything Allergan  
15 specific would be on the documents  
16 produced list?

17 A. I don't know. For example,  
18 in Roman Numeral II, other materials  
19 considered, we have the Allergan Inc.  
20 Form 10(k) from 2014. So that's Allergan  
21 specific.

22 Q. All right. So let's get at  
23 this another way.

24 Which -- are there any

1 documents that you feel support this  
2 Opinion Number 3 that you have not cited  
3 in the section of your report that is  
4 support for Opinion Number 3? And if  
5 there are specific documents that you  
6 recall, you can answer that way. If  
7 there are categories of documents that  
8 you recall, you can answer that way.

9 A. So I just want to make sure  
10 I'm answering your question in a form  
11 that is acceptable to you or that you  
12 want me to answer it in.

13 You want me to say -- to  
14 tell you what supports my Opinion Number  
15 3 other than what's cited in the  
16 discussion of Opinion Number 3 in Roman  
17 Numeral V; is that correct or --

18 Q. That's correct.

19 A. Okay.

20 Q. I just don't want -- we  
21 don't want to be surprised at trial. If  
22 there are additional categories of  
23 documents that you feel support this  
24 opinion that you didn't include in your

1 report for whatever reason, I would want  
2 to know about those.

3 A. Right. So just to be clear,  
4 there would be a document such as the  
5 master purchase agreement, which on a  
6 quick look at the citations in Opinion 3,  
7 I don't see cited. In the footnotes to  
8 Opinion 3 on Pages 32 to 41, certainly  
9 the master purchase agreement is a  
10 document that I relied on in forming my  
11 opinion and that supports my opinion,  
12 several of my opinions, including Opinion  
13 Number 3, that the Allergan entities and  
14 divested entities were all substantial  
15 companies with their own corporate  
16 governance infrastructures.

17 Q. And by master purchase  
18 agreement, just so the record is clear,  
19 you are referring to the purchase  
20 agreement governing the purchase of the  
21 generics entities by Teva from the  
22 Allergan PLC, correct?

23 A. Yes, dated July 26, 2015.

24 Q. Okay. Are there any

1 additional documents that are not cited  
2 in Heading 5, support for Opinion 3, that  
3 you believe support Opinion 3?

4 A. Sitting here right now, I  
5 can't recall any additional documents  
6 that I relied on other than the master  
7 purchase agreement between Allergan and  
8 Teva that is not cited in Roman Numeral  
9 V, support for Opinion 3.

10 Q. So looking at Opinion 4 on  
11 Page 12 of your report.

12 Do you see that?

13 A. Yes.

14 Q. And it begins with, "The  
15 2016 transactions with buyer involved the  
16 sale of 100 percent of the stock that the  
17 Allergan entities owned in the divested  
18 entities."

19 Do you see that?

20 A. Yes.

21 Q. And it goes on to state,  
22 "These transactions do not indicate that  
23 the Allergan entities improperly  
24 controlled the divested entities."

1 Do you see that?

2 A. Yes.

3 Q. It also goes on to state,  
4 that, "Because the 2016 transactions was  
5 done at arm's length between a  
6 sophisticated seller and a sophisticated  
7 buyer, the transactions also provide a  
8 further indication that there was  
9 complete corporate separateness between  
10 the Allergan entities and the divested  
11 entities whose shares were sold to buyer  
12 in 2016."

13 Do you see that?

14 A. Yes.

15 Q. And by buyer you're  
16 referring to Teva; is that right?

17 A. So specifically by buyer,  
18 I'm referring to the entities described  
19 in Footnote 2 on Page 5 of my report.

20 Q. That's Teva Pharmaceuticals  
21 Industries Limited, correct?

22 A. I believe it's Teva  
23 Pharmaceuticals Industries Limited or  
24 affiliates or subsidiaries designated by

1     Teva Pharmaceuticals Industry Limited.  
2     But it would be Teva Pharmaceuticals  
3     Industries Limited or an affiliate or  
4     subsidiary of Teva Pharmaceuticals  
5     Industries Limited that are designated by  
6     Teva Pharmaceuticals Industries Limited.

7             Q.     So in support of Opinion  
8     Number 4, are there any additional  
9     documents or categories of documents that  
10    are not identified in Section Roman  
11    Numeral VI which begins on Page 41  
12    entitled "Support For Opinion Number 4"?

13            A.     Okay.  There --  
14                    (Brief phone interruption.)

15                   THE WITNESS:  So I'm a  
16                   little -- I believe that  
17                   everything is -- that all of the  
18                   sources of my support for Opinion  
19                   Number 4 are in Roman Numeral VI  
20                   of my report, Pages 41 to 45.

21                   I notice that in Paragraph  
22                   96 of my report I talk about a  
23                   settlement agreement and mutual  
24                   releases dated January 31, 2018.

1 I believe that this document  
2 refers to a settlement that  
3 related to a dispute about working  
4 capital in connection with the  
5 transactions described in the  
6 master purchase agreement.

7 But I'm not 100 percent sure  
8 sitting here right now if that's a  
9 separate document. Then I would  
10 reference that document. But I  
11 think it's the same document. I'd  
12 have to -- I'd have to go back  
13 and -- and check the document  
14 to -- to make sure. But these --  
15 these -- this post closing  
16 litigation, I believe, is  
17 supportive of my Opinion Number 4  
18 and I just want to make sure that  
19 that's what -- that all of that  
20 litigation is being described  
21 in -- in Paragraph 96.

22 In addition to that -- those  
23 constitute the bases for my -- for  
24 my opinion.

1 BY MS. BAIG:

2 Q. Okay. There's no additional  
3 bases for Opinion Number 4 that are not  
4 set forth in this report; is that right?

5 A. Well, with the possible  
6 exception that I just mentioned, that's  
7 correct.

8 Q. Okay. And there are no  
9 additional documents that you relied on  
10 in forming Opinion Number 4 that are not  
11 set forth in this report with the  
12 possible exception that you just  
13 mentioned?

14 A. Correct.

15 Q. Looking at Opinion Number 5  
16 on Page 12. It states, "The structure of  
17 the 2016 transactions with buyer show  
18 that the 2016 sales transactions did not  
19 result in any harm or unfairness to tort  
20 claimants, such as the plaintiffs."

21 Do you see that?

22 A. Yes, I do.

23 Q. And the bases for your  
24 Opinion Number 5 are set forth on Roman



1 Numeral VII beginning on Page 45 of your  
2 report.

3 Do you see that?

4 A. I do, yes.

5 Q. And do you have any  
6 additional bases that are not set forth  
7 in Roman Numeral VII that support Opinion  
8 Number 5?

9 A. I would -- the -- was a  
10 significant payment made by Allergan to  
11 Teva in a post-closing transaction  
12 settling up that related to  
13 reconciliation of -- of working capital  
14 accounts. And I believe that settlement  
15 agreement is described in  
16 Allergan\_MDL\_01396687.

17 To the extent that that  
18 document is not cited in -- in Opinion  
19 Number 5, I would add that as additional  
20 support for that opinion.

21 Q. And what is your  
22 understanding as to -- as to what the  
23 reconciliation for under -- for working  
24 capital accounts was?

1           A.       So, as a matter of ordinary  
2       and customary practice in mergers and  
3       acquisitions transactions, the price paid  
4       by an arm's-length buyer from an  
5       arm's-length seller equals the buyers  
6       estimate of the value of the assets being  
7       acquired minus those liabilities. An  
8       important part of that assets minus  
9       liabilities equation is what's known as  
10      working capital, which are current assets  
11      and current liabilities, and it is  
12      ordinary and customary practice for the  
13      parties to say, in essence, we are unable  
14      to calculate at the moment of settlement  
15      exactly what the size of the -- of the  
16      working assets and what the size of  
17      the -- of the working liabilities are  
18      because it depends on things like how our  
19      ability to collect from suppliers and --  
20      and customers and the timing of payments,  
21      and certain other information that won't  
22      be decided until later.

23                       So the parties agree on  
24      bases various formulas and step functions

1 common in the industry to have a payment  
2 from one side to the other to reconcile  
3 differences between the amount of the --  
4 in the working capital accounts of the  
5 selling entities that existed at the time  
6 of -- that existed in reality and what  
7 was predicted at the time of closing.

8 And there was apparently a  
9 dispute between Allergan and Teva about  
10 this. And there was some form of  
11 litigation between the parties, I think  
12 it was an arbitration. And then the  
13 parties reached a settlement.

14 Q. Okay. Any additional bases  
15 of support for Opinion Number 5 that are  
16 not set forth in your section entitled  
17 "Support For Opinion Number 5"?

18 A. Yeah. So with respect to  
19 Opinion Number 5, which is that the  
20 structure of the 2016 transactions with  
21 buyer show that the 2016 sales  
22 transactions did not result in any harm  
23 or unfairness to tort claimant, such as  
24 the plaintiffs.

1                   In part, my Opinion Number 5  
2   is predicated on what I would  
3   colloquially describe as a -- as a dog  
4   that didn't bark kind of support for my  
5   Opinion Number 5. In that it would have  
6   been concerning to me if I had seen any  
7   indication of any kind of, what is --  
8   what is known as asset stripping, any  
9   efforts to take money out of the entities  
10   that were transferred to Teva in any way  
11   that was improper or inappropriate.

12                   Instead, as I mentioned a  
13   few moments ago, Allergan returned a  
14   consideration to Teva in the settlement  
15   transaction and I saw no evidence in any  
16   documents, although I specifically  
17   searched for such documents and asked for  
18   such documents, that there was any --  
19   any -- any inappropriate asset stripping  
20   of assets from these transferred  
21   entities. And the fact that there was no  
22   such evidence was relevant to me in light  
23   of my experience as an expert in this  
24   matter and in other cases where one sees

1       allegations of that sort.

2               Q.       Any additional bases or  
3       documents that are supportive of Opinion  
4       Number 5 that are not set forth in your  
5       report under the heading Roman Numeral  
6       VII, "Support For Opinion Number 5"?

7               A.       Sitting here right now, no,  
8       I can't think of any other, any  
9       additional support that's not included in  
10      that section.

11              Q.       So looking back again at  
12      Page 12. Your Opinion Number 6 which  
13      begins, "After the sale to buyer by the  
14      Allergan entities of all of their stock  
15      in the divested entities in 2016, the  
16      Allergan entities complete" --  
17      "completely severed their corporate  
18      governance ties with the divested  
19      entities."

20                      Do you see that?

21              A.       Yes.

22              Q.       And the support for Opinion  
23      Number 6 begins in your paragraph Roman  
24      Numeral VIII titled "Support For Opinion

1       Number 6," on Page 52.

2                       Do you see that?

3               A.       Yes, I do.

4               Q.       And are there any additional  
5       bases of support for Opinion Number 6  
6       that are not set forth in this report  
7       under that heading?

8               A.       So the answer to that is  
9       yes, in a -- in a way similar to my  
10      answer with respect to Opinion 5, which  
11      is, in addition to the discussion of  
12      Opinion 6 in Roman Numeral VIII between  
13      Pages 52 and -- and 54, I looked in the  
14      record and on the internet, in public  
15      filing documents and elsewhere, for any  
16      evidence or indication or suggestion that  
17      after the sale to the buyer in 2016,  
18      Allergan or any Allergan entities had any  
19      continuing corporate governance  
20      relationship with the divested entities,  
21      and I -- I found no such evidence.

22                       And -- and that kind of, if  
23      you will, negative finding or lack of any  
24      evidence provided further support for my

1 Opinion Number 6.

2 Q. Anything else that's not set  
3 forth in this report under Roman Numeral  
4 Section VIII entitled "Support For  
5 Opinion Number 6"?

6 A. None that I can think of  
7 right now, no.

8 Q. So looking back at Page 13  
9 of your expert report, where it  
10 summarizes Opinion Number 7 which begins,  
11 "On December 30, 2008, a former Allergan  
12 subsidiary purchased certain assets  
13 related to the branded oral long-acting  
14 opioid analgesic drug Kadian."

15 Do you see that?

16 A. Yes, I do.

17 Q. And do you see a little  
18 further down after the reference to  
19 Footnote 14, it states, "As a matter of  
20 basic corporate governance, for very  
21 sound reasons of finance and economics,  
22 it is well established that the sale of  
23 assets from one corporation to another  
24 does not result in tort liability for the

1 company that purchases the assets for the  
2 contract or tort liabilities of the  
3 corporation that sells the assets absent  
4 an explicit agreement to the contrary by  
5 the parties."

6 Do you see that?

7 A. Yes.

8 Q. And the bases for your  
9 Opinion Number 7 are set forth in Roman  
10 Numeral IX of your report entitled  
11 "Support For Opinion Number 7."

12 Do you see that?

13 A. Yes. In addition,  
14 counselor, I --

15 Q. Hang on. I've got to ask  
16 the question first.

17 A. I beg your pardon.

18 Q. You see -- you see the  
19 section Roman Numeral IX?

20 A. Yes.

21 Q. "Support For Opinion  
22 Number 7," correct?

23 A. I do.

24 Q. And this section sets forth



1 the bases for your Opinion Number 7,  
2 correct?

3 A. Yes.

4 Q. Are there any additional  
5 bases for your Opinion Number 7 that are  
6 not set forth in this section?

7 A. Yes.

8 Q. And what are those?

9 A. So I would add, and with  
10 respect to all of my answers, but  
11 particularly with respect to this one, as  
12 I mentioned in Paragraph 12 of my report  
13 on Page 9, an additional bases or support  
14 for my opinions, the opinions that I  
15 express in this report, is the concept  
16 that the incorporation process permits  
17 the creation of a legal entity that is  
18 not an association of individuals, but  
19 rather a discrete legal entity whose  
20 rights and obligations are distinct from  
21 those of its creators, investors,  
22 managers and other constituents.

23 And -- and I would say  
24 that -- that the information contained in

1 my report or the -- points, the analysis  
2 in Paragraphs 12 through 16 of my report  
3 provide -- are consistent with and  
4 provide further support for Opinion  
5 Number 7, particularly.

6 Q. Are there any additional  
7 bases of support for Opinion Number 7  
8 that are not referenced in your report  
9 under this section?

10 A. I mean I could be more  
11 specific and expand on how these various  
12 doctrines support Opinion Number 7, but  
13 it would just be being a little bit more  
14 specific, which I'm happy to do. It  
15 wouldn't be providing additional sources.

16 Q. Are there any additional  
17 documents that are not cited in this  
18 section that are supportive of your  
19 Opinion Number 7 that you reviewed?

20 A. No.

21 Q. So you have no corrections  
22 as you sit here today to your expert  
23 report; is that right?

24 A. I have no substantive

1 corrections. I believe when I read  
2 through my report in connection with my  
3 preparation for today's deposition, I  
4 found a couple of typographical errors,  
5 but I'm not sure that I could identify  
6 them right now, and I found no  
7 typographical errors that would affect or  
8 change my opinion -- oh, so for example,  
9 if one were to look on Page 18, Paragraph  
10 32 of my deposition, the very end --

11 Q. Of your report you mean?

12 A. Did I say deposition? I'm  
13 sorry my report. I think there are two  
14 periods after the word "efficiency." So  
15 I would delete that.

16 But other than corrections  
17 of that kind, I don't have any  
18 corrections to my report.

19 Q. So the report and all  
20 exhibits are complete and accurate to the  
21 best of your knowledge as you sit here  
22 today; is that right?

23 A. Yes.

24 MS. BAIG: I would again

1 request that any inaccuracies in  
2 the written report discovered  
3 after today please be provided to  
4 us in advance of trial. Would you  
5 agree to that, Counsel?

6 MS. LEVY: We will agree to  
7 that.

8 BY MS. BAIG:

9 Q. Do you have any outline of  
10 this report or notes associated with this  
11 report?

12 A. No.

13 Q. Do you have any additional  
14 plans on working on this case other than  
15 what you've already testified between now  
16 and trial?

17 A. No.

18 Q. Is there anything additional  
19 that you feel that you need to do in  
20 order to give opinions about this case at  
21 trial? Is there any additional work that  
22 you feel you need to perform?

23 A. At the moment, no. I would  
24 anticipate that should other expert

1 reports be filed in the future related to  
2 the subject matter of my testimony today,  
3 that I would review those, but I have no  
4 current awareness of any such reports or  
5 immediate plans to review any such  
6 reports.

7 Q. And you have no plans to  
8 review any additional documents prior to  
9 trial?

10 A. Not -- no, sitting here  
11 right now, I have no such plans.

12 Q. Is there any information  
13 that you do not currently have that would  
14 either strengthen or weaken your  
15 opinions?

16 MS. LEVY: Objection to  
17 form. Calls for speculation.

18 THE WITNESS: Certainly, as  
19 I say specifically in my report, I  
20 would never -- I would not rule  
21 out the possibility that something  
22 could happen that would change my  
23 mind. I specifically would refer  
24 to Paragraph 6 on Page 4 of my

1 report where I reserve the right  
2 to modify or supplement the  
3 opinions in light of new evidence.

4 It's certainly -- I would  
5 not rule out or consider it  
6 impossible or unimaginable that  
7 there could be additional evidence  
8 that would cause me to reconsider  
9 my opinion. I'm not aware of any  
10 such evidence or even of the  
11 possibility of the existence of  
12 any such evidence.

13 But it certainly, as a -- as  
14 a -- as a statistical matter, the  
15 probability is greater than zero  
16 that such evidence might exist  
17 that could reinforce or undermine  
18 the opinions that I've expressed  
19 today.

20 BY MS. BAIG:

21 Q. Are there any facts that you  
22 can think of as you sit here right now  
23 that would -- that would influence or  
24 change your opinions in any way?

1           A.       Any particular facts? Or --  
2       I'm not quite sure. I'm not quite sure.  
3       I mean, I don't -- I don't -- if -- if --  
4       if it were revealed to me that Mr. --  
5       that -- that -- that Mr. Hertz's  
6       declaration or Mr. Kaufhold's declaration  
7       or the -- or the -- or the master  
8       purchase agreement or the public  
9       reporting of the companies that I cite in  
10      Roman Numeral II, if there were -- if it  
11      turned out that these were factually  
12      wrong and I was predicating some or  
13      portions of my opinion on incorrect  
14      factual assumptions, that could have an  
15      effect on my opinion, I suppose. It's  
16      certainly within the realm of  
17      possibility.

18                   I have no reason to believe  
19      that there are any -- that these  
20      documents are fraudulent or there's  
21      anything mistaken about it. But  
22      certainly if I were apprised of that  
23      fact, it would change my -- it could  
24      likely change my opinion, depending on

1     what new information came out.

2             Q.     Anything else that you can  
3     think of right now?

4             A.     No.

5             Q.     Any additional categories of  
6     documents that could change your opinion  
7     that you haven't reviewed already?

8             A.     No, not -- I don't believe  
9     so.

10            Q.     And there's nothing more to  
11    your knowledge that needs to be reviewed  
12    in order to support your opinions; is  
13    that right?

14            A.     That's correct.

15            Q.     How certain of you are  
16    your -- how certain are you of your  
17    opinions in this case?

18                   MS. LEVY:   Object to form.

19    BY MS. BAIG:

20            Q.     Do you have a degree of  
21    certainty?

22            A.     Mm-hmm.   I would say I --  
23    with respect to the opinions expressed in  
24    this report, I am extremely certain, I



1     could say that in the -- I've never been  
2     more certain about my opinion in any of  
3     the 80 cases in which I've testified as  
4     an expert witness, so I would hold these  
5     opinions with an extremely high degree of  
6     certainty.

7             Q.     Have you met with any other  
8     experts in this case?

9             A.     I have not.

10            Q.     And you have -- I think  
11     you've said before that you have not met  
12     with any other lawyers for any of the  
13     other defendants, correct?

14            A.     That is correct.

15            Q.     Are you aware of -- of who  
16     the experts are that have been retained  
17     in this case?

18            A.     I am not.

19            Q.     You're not aware of any of  
20     them, any of the names of any of the  
21     experts in this case?

22            A.     I am not.

23            Q.     So it's safe to assume that  
24     you have not reviewed any other expert

1 reports in this case?

2 A. That is correct. I've not  
3 reviewed any other expert reports.

4 MS. BAIG: I'm close to the  
5 end, so why don't we take a  
6 five-minute break.

7 THE WITNESS: Okay. Good.

8 THE VIDEOGRAPHER: Off the  
9 record at 3:06 p.m.

10 (Short break.)

11 THE VIDEOGRAPHER: We are  
12 back on the record at 3:18 p.m.

13 BY MS. BAIG:

14 Q. Okay. Has your testimony  
15 ever been excluded from trial?

16 A. My testimony has never been  
17 excluded in the sense that I've never  
18 been prohibited from testifying. I  
19 believe there have been cases where my  
20 testimony has been curtailed such that a  
21 particular topic, like professional  
22 responsibility, was kind of preemptively  
23 excluded as a topic for my testimony.

24 But to my knowledge, while

1 my testimony has been curtailed on  
2 occasion, I don't -- I do not -- I  
3 believe there's never been a case where  
4 my testimony has been completely  
5 excluded.

6 Q. You're familiar with  
7 something called a Daubert motion?

8 A. Yes, I am.

9 Q. And so you've never been  
10 Dauberted? You've never been excluded as  
11 a result of a Daubert motion?

12 A. Well, not to mince words.  
13 So I take it Dauberted means, the way I  
14 see it is, someone makes a motion to  
15 exclude the testimony. And I believe  
16 that has been done in my case. I don't  
17 believe a motion has ever been  
18 successful.

19 Q. Okay. And what are the  
20 cases that you recall where your  
21 testimony has been curtailed?

22 A. So I think that there was a  
23 case a long time ago in Texas called  
24 Seven Seas. I don't remember what it was

1     about. But it had something to with  
2     Colombia, the country Colombia, an oil  
3     pipeline there and an investment in it.  
4     And I was permitted to testify about  
5     corporate governance matters, but I was  
6     not permitted to testify about issues  
7     related to professional responsibility of  
8     lawyers, although my testimony has was  
9     not being offered relative professional  
10    responsibility of lawyers. But the judge  
11    said that I shouldn't -- that at trial  
12    that I wouldn't be allowed to testify  
13    about that.

14             Q.     Wait, wait. Who was the  
15    judge?

16             A.     I don't recall.

17             Q.     State or federal court?

18             A.     I don't remember if it was  
19    state or -- I don't recall.

20             Q.     Where was it venued?

21             A.     The -- the law firm that  
22    retained me was in Texas. The economic  
23    activity that gave rise to the legal  
24    dispute was in Columbia. I don't know.

1 I don't know where -- what the  
2 jurisdiction of the court was.

3 Q. And do you remember either  
4 of the parties' names?

5 A. Yes. One party was named 7  
6 Seas, S-E-A-S, and the Number 7,  
7 S-E-V-E-N. I don't remember the other  
8 parties.

9 Q. And you were retained on  
10 behalf of 7 Seas?

11 A. I don't recall.

12 Q. Any other cases that you  
13 recall in which your testimony was  
14 curtailed?

15 A. There is a case on my list,  
16 there's -- of testimony, the Robinson  
17 case, and I believe that there were  
18 limitations placed on my testimony in  
19 that case, although I don't recall what  
20 they were. I think the case settled. I  
21 don't really -- I don't remember what the  
22 limitations were. I was -- my testimony  
23 was not prohibited, but there were -- it  
24 was -- there were certain limitations

1 placed on it.

2 Q. Do you recall who the judge  
3 was there?

4 A. No.

5 Q. That would be in Exhibit 2  
6 of your --

7 A. Yes, I believe it should be.

8 Q. Okay. What year?

9 A. Oh, I don't know. I can  
10 look though. I can tell you. Hold on.

11 Q. Oh. 2017, Robinson  
12 Mechanical Contractors Inc. versus PTC  
13 Group Holdings Corp.?

14 A. Yes.

15 Q. And you don't recall what  
16 portion of your testimony was excluded or  
17 what the basis was?

18 A. Correct.

19 Q. Any other cases where you  
20 recall your testimony was excluded or  
21 curtailed in any way?

22 A. No.

23 Q. After having been through  
24 the list of cases that you recall having

1     been retained in, do you have an estimate  
2     of what percentage of those cases you  
3     were retained for the defense as opposed  
4     to for the plaintiffs?

5             A.     In all of the cases?

6             Q.     Out of all of them?

7             A.     I would say in the  
8     neighborhood of 50 percent. Yeah, I  
9     would -- I could not -- I could not  
10    predict with any certainty whether I  
11    testified more on behalf of plaintiffs or  
12    more on behalf of defendants. So I would  
13    say it's -- my estimate would be roughly  
14    in equipoise, all the -- the work that  
15    I've done for government has generally  
16    been on the plaintiff side, with the  
17    exception of the Winstar cases, which is  
18    on the defense side for the government.

19            Q.     Have you --

20            A.     So that would -- that would  
21    be my best estimate.

22            Q.     Okay. Have you ever  
23    practiced law?

24            A.     No.

1 MS. BAIG: Okay. I have no  
2 further questions. Thank you for  
3 your time.

4 MS. LEVY: I just have a  
5 quick follow-up.

6 Professor Macey --

7 THE VIDEOGRAPHER: Counsel,  
8 I'm sorry, can you put your  
9 microphone on.

10 - - -

11 EXAMINATION

12 - - -

13 BY MS. LEVY:

14 Q. For the last hour or so of  
15 your deposition, counsel was asking you  
16 about the bases of your opinions, the  
17 specific bases for your opinions in your  
18 report.

19 Are there any other bases  
20 more general than the specifics you were  
21 asked for your -- for the opinions that  
22 you offered in your report?

23 A. So generally speaking, in  
24 addition to deriving support for my



1     opinions from the documents I reviewed  
2     that are listed in Exhibit 3 of my  
3     report, I also relied on my general  
4     experience as an academic and teaching  
5     and research and the information and  
6     experience I've garnered for testifying  
7     in an expert -- as an expert witness in  
8     prior cases, serving on boards of  
9     directors of public companies that have  
10    affiliates and subsidiaries and other  
11    general academic and -- and life  
12    experience, as well as behavior that I've  
13    observed in other cases, such as looting  
14    a subsidiary, that I did not observe in  
15    this case.

16                 Q.     Are your opinions in your  
17    expert report independent of each other  
18    or related to each other?

19                 A.     I would describe them as  
20    related to each other. That they -- as I  
21    mentioned in the early part of my report,  
22    they are all based on a single kind of  
23    overarching analytical premise that  
24    companies are distinct entities and

1     that -- that the concept of limited  
2     liability reflects that principle.

3             Q.     Earlier in your deposition  
4     you used the phrase "a dog that didn't  
5     bark." Can you explain further what you  
6     mean by that?

7             A.     So essentially the -- the  
8     idea is in many cases, in fact all of the  
9     cases that I've worked on, involving  
10    disregarding the corporate form, there  
11    has been a -- an indication that in order  
12    for the corporate veil to be pierced,  
13    there should be some evidence of fraud,  
14    or a significant wrongdoing.

15            So the dog that didn't bark  
16    would be the absence of evidence of fraud  
17    or significant wrongdoing. The absence  
18    of allegations of fraud or significant  
19    wrongdoing have -- with respect to abuse  
20    of the corporate form, would be sort of  
21    the silence, the thing you don't hear,  
22    the proverbial dog that didn't bark.

23            Q.     And is the -- the dog that  
24    didn't bark, do you rely on absence of

1 information in forming your opinions in  
2 this case?

3 A. Yes.

4 MS. LEVY: Okay. Thank you.  
5 I don't have anything further.

6 MS. BAIG: Nor do I.

7 THE VIDEOGRAPHER: This  
8 concludes today's deposition. The  
9 time is 3:27 p.m. We are off the  
10 record.

11 (Excused.)

12 (Deposition concluded at  
13 approximately 3:27 p.m.)

14

15

16

17

18

19

20

21

22

23

24

1  
2 CERTIFICATE  
3  
4

5 I HEREBY CERTIFY that the  
6 witness was duly sworn by me and that the  
7 deposition is a true record of the  
8 testimony given by the witness.

9 It was requested before  
10 completion of the deposition that the  
11 witness, JONATHAN R. MACEY, have the  
12 opportunity to read and sign the  
13 deposition transcript.

14  
15 \_\_\_\_\_  
16 MICHELLE L. GRAY,  
17 A Registered Professional  
18 Reporter, Certified Shorthand  
19 Reporter, Certified Realtime  
20 Reporter and Notary Public  
21 Dated: May 30, 2019  
22  
23  
24

25 (The foregoing certification  
26 of this transcript does not apply to any  
27 reproduction of the same by any means,  
28 unless under the direct control and/or  
29 supervision of the certifying reporter.)  
30  
31  
32

1 INSTRUCTIONS TO WITNESS

2  
3 Please read your deposition  
4 over carefully and make any necessary  
5 corrections. You should state the reason  
6 in the appropriate space on the errata  
7 sheet for any corrections that are made.

8 After doing so, please sign  
9 the errata sheet and date it.

10 You are signing same subject  
11 to the changes you have noted on the  
12 errata sheet, which will be attached to  
13 your deposition.

14 It is imperative that you  
15 return the original errata sheet to the  
16 deposing attorney within thirty (30) days  
17 of receipt of the deposition transcript  
18 by you. If you fail to do so, the  
19 deposition transcript may be deemed to be  
20 accurate and may be used in court.

1		-	-	-	-	-	-
2		-	-	-	-	-	-
3							
4	PAGE	LINE	CHANGE				
5							
6		REASON:					
7							
8		REASON:					
9							
10		REASON:					
11							
12		REASON:					
13							
14		REASON:					
15							
16		REASON:					
17							
18		REASON:					
19							
20		REASON:					
21							
22		REASON:					
23							
24		REASON:					

1  
2 ACKNOWLEDGMENT OF DEPONENT

3  
4 I, \_\_\_\_\_, do  
5 hereby certify that I have read the  
6 foregoing pages, 1 - 272, and that the  
7 same is a correct transcription of the  
8 answers given by me to the questions  
9 therein propounded, except for the  
10 corrections or changes in form or  
11 substance, if any, noted in the attached  
12 Errata Sheet.

13  
14  
15 \_\_\_\_\_  
16 JONATHAN R. MACEY

DATE

17  
18  
19 Subscribed and sworn  
to before me this

20 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

21 My commission expires: \_\_\_\_\_

22  
23 \_\_\_\_\_  
Notary Public

	LAWYER'S NOTES		
	PAGE	LINE	
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			